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CONSENTING TO AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

H.J. Res. 17

TO CONSENT TO AN AMENDMENT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

AUGUST 13, 1986

Printed for the use of the
Committee on Energy and Natural Resources

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CONSENTING TO AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

WEDNESDAY, AUGUST 13, 1986

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Lowell P. Weicker, Jr., presiding.

Present: Senators Weicker and Ford.

Also present: Allen Stayman, professional staff member; and D. Michael Harvey, chief counsel for the minority.

OPENING STATEMENT OF HON. LOWELL P. WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. Today the committee will receive testimony on House Joint Resolution 17, consenting to amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act of 1920. I would like to welcome our witnesses here, some of whom have traveled a great distance, and ask your understanding of this morning's time constraints. Because the Senate has convened early and has a vote scheduled to begin shortly, the committee will have only about a half an hour of time to receive testimony. I would ask witnesses to summarize their statements as much as possible. The full statements will be made part of the record. If there is insufficient time for questioning, the committee will be allowed to submit questions to the witnesses for response to the record.

I ask that my own prepared statement be made a part of the record at this point.

[The prepared statement of Senator Weicker and the text of H.J. Res. 17 follow:]

OPENING STATEMENT

SENATOR LOWELL P. WEICKER, JR.

ON

H.J. RES. 17

BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

AUGUST 13, 1986

TODAY THE COMMITTEE ON ENERGY AND NATURAL RESOURCES WILL RECEIVE TESTIMONY ON HOUSE JOINT RESOLUTION 17, CONSENTING TO AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920. THIS LEGISLATION WAS ENACTED BY CONGRESS IN 1920 TO PROVIDE NATIVE HAWAIIANS WITH AN OPPORTUNITY TO RETURN TO THE LAND THROUGH A FEDERALLY SPONSORED HOMESTEADING PROGRAM. WHEN HAWAII BECAME A STATE IN 1959 CONCRESS TRANSFERRED THE MANAGEMENT AND DISPOSITION OF THE APPROXIMATELY 200,000 ACRES OF HAWAIIAN HOME LANDS TO THE STATE OF HAWAII. HOWEVER, CONGRESS RETAINED A CONTINUING RESPONSIBILITY TO ASSIST NATIVE HAWAIIANS IN MEETING THE GOALS OF THE 1920 ACT.

MORE SPECIFICALLY, SECTION 4 OF THE HAWAII STATEHOOD ACT REQUIRES THAT ANY CHANGE OF THE QUALIFICATIONS OF LAND LESSEES UNDER THE HAWAIIAN HOMES COMMISSION CANNOT BE MADE WITHOUT THE CONSENT OF CONGRESS. IN 1982 THE STATE OF HAWAII PASSED ACT 272 WHICH WOULD CHANGE THE QUALIFICATIONS OF LESSEES AND IN ACCORDANCE WITH SECTION 4, THIS LEGISLATION HAS BEEN SUBMITTED TO CONGRESS FOR APPROVAL.

THE U.S. HOUSE OF REPRESENTATIVES PASSED H.J. RES. 17 ON APRIL 8, 1986. IN ADDITION TO CONSENTING TO ACT 272, THE HOUSE CONSENTED TO AN ADDITIONAL 52, OF 53, OTHER AMENDMENTS TO THE HAWAIIAN HOMES ACT WHICH THE STATE OF HAWAII HAS ENACTED SINCE 1959. ACT 272, BECAUSE IT REDUCES THE NATIVE HAWAIIAN BLOOD-QUANTUM REQUIREMENT OF LESSEES FROM ONE-HALF TO ONE-QUARTER IN CERTAIN CIRCUMSTANCES, CLEARLY REQUIRES CONGRESSIONAL CONSENT. THE NEED FOR CONGRESSIONAL CONSENT IN THE CASE OF THE OTHER AMENDMENTS WAS UNCLEAR, BUT THE HOUSE GRANTED CONSENT IN ORDER TO AVOID ANY CONFUSION REGARDING THE LEGAL EFFECTIVENESS OF THESE OTHER AMENDMENTS.

ON APRIL 9, 1986 THE RESOLUTION WAS REFERRED TO THIS COMMITTEE FOR CONSIDERATION. TODAY WE WILL HEAR FROM THE DEPARTMENT OF THE INTERIOR, THE OFFICE OF HAWAIIAN AFFAIRS AND FROM MY TWO DISTINGUISHED COLLEAGUES FROM THE STATE OF HAWAII, SENATORS INOUYE AND MATSUNAGA.

II

99TH CONGRESS
2D SESSION

H. J. RES. 17

IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day, APRIL 8), 1986

Received; read twice and referred to the Committee on Energy and Natural Resources

JOINT RESOLUTION

To consent to an amendment enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, as required by section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States hereby consents to all amendments to the Hawaiian Homes Commission Act, 1920, as amended, adopted between August 21, 1959, and June 30, 1985, by the State of Hawaii, either in the Constitution of the State of Hawaii or

in the manner required for State legislation, except for Act 112 of 1981.

Passed the House of Representatives April 8, 1986.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

Senator WEICKER. Now I see my colleagues, Senator Inouye, Congressman Akaka. I understand Senator Matsunaga will be delayed and we will receive his statement when he arrives. First, it gives me just great pleasure to introduce Senator Inouye in the sense that no individual in the United States Senate is more conscious of the duties he performs on behalf of his own constituency in the State of Hawaii and just as importantly the obligations that he carries on his shoulders for many of those that need our special care in the United States of America. I truly consider him to be one of the great Senators in this body, and probably more importantly, a great friend.

Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator INOUYE. Thank you very much.

I, too, consider you my great friend.

Mr. Chairman, I thank you very much for this opportunity to express our thoughts on H. J. Res. 17. It is a measure to give the necessary consent of Congress to the amendments of the Hawaiian Homes Commission Act which have been recommended and adopted by the State of Hawaii.

Mr. Chairman, upon enactment of the Hawaiian Homes Commission Act in 1920 the United States Congress set aside approximately 200,000 acres of government land for the purpose of establishing a homesteading program for persons of at least 50 percent Hawaiian ancestry.

When Hawaii became a State in 1959, Congress required as a condition of admission that the Hawaiian Homes Commission Act become a provision of the Hawaii State constitution. At this moment the title to the Hawaiian Homes Lands and responsibility for managing the Act were transferred to the State. However, the Federal Government, in an effort to perpetuate its dedication to assist native Hawaiians, required that any amendments by the State which might diminish the rights of native Hawaiians must be consented to by the United States.

It is for the purpose of rendering Congressional consent to State-passed amendments that this joint resolution has been presented. The primary amendment under consideration, Act 272 of the Hawaii Session Laws of 1982, reduces the blood quantum requirement of Hawaiian homestead lessee spouse, or children to assume his unexpired homestead interest upon his death. Currently a successor must meet the 50 percent requirement imposed by law upon original lessees. The amendment would permit spouses or children of 25 percent Hawaiian ancestry to assume a lease.

Many instances have arisen where original homesteaders have spouses who are non-native Hawaiians, and because of the present successor prerequisite of at least 50 percent Hawaiian ancestry, neither the homesteader spouse nor the offspring have the minimum blood requirement to qualify. The death of a lessee thus often results in the eviction of his or her spouse and children.

The legislators and Governor of the State of Hawaii are convinced that this situation threatens family stability and security

and frustrates the intent of the Hawaiian Homes Commission Act. With the concurrence of the Department of the Interior, the Hawaiian Homes Commission, and the Office of Hawaiian Affairs, they have concluded that the native Hawaiian lessee should be provided with assurances that their closest family may succeed them in order to encourage stability and the improvement of property as well as to avoid inhumane results.

Nevertheless, it must be emphasized that the proposed amendment applies only to the surviving spouse and children and that all other successors to homestead leases must still meet the existing 50 percent requirement. Additionally, Mr. Chairman, at the recommendation of the Department of the Interior, Congressional consent is being sought for just about every amendment adopted by the State since 1959. Although initially only 14 of the amendments were thought to have needed consent, it was determined by the Federal-State Task Force on Hawaiian Homelands, a panel composed of members of the Department of the Interior and the State of Hawaii, that all 53 amendments should be proposed for consent in order to avoid any confusion in the future as to the legality of any revisions, and I agree that this is an appropriate step.

I believe that a review of the available record will demonstrate that ratification of these amendments is both appropriate and necessary. Mr. Chairman, this measure represents the first time the State of Hawaii has sought the consent of Congress for amendments to the Hawaiian Homes Commission Act. These amendments have been carefully debated and reviewed both on the State and Federal levels, and I believe they represent a reasonable means of forwarding the purposes of the original Act, that of returning native Hawaiians to the land for the prosperity and perpetuity of the Hawaiian race.

Therefore, Mr. Chairman, I urge your Committee to favorably report H. J. Res. 17.

Senator WEICKER. Thank you very much, Senator Inouye.

[The prepared statement of Senator Inouye follows:]

STATEMENT BY SENATOR DANIEL K. INOUYE BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

H.J. RES. 17, GIVING THE CONSENT OF CONGRESS TO AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920.

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU AND THE MEMBERS OF YOUR COMMITTEE FOR AGREEING TO HOLD THIS HEARING.

H.J. RES. 17 IS A MEASURE WHICH GIVES THE NECESSARY CONSENT OF CONGRESS TO THE AMENDMENTS OF THE HAWAIIAN HOMES COMMISSION ACT WHICH HAVE BEEN RECOMMENDED AND ADOPTED BY THE STATE OF HAWAII.

UPON ENACTMENT OF THE HAWAIIAN HOMES COMMISSION ACT IN 1920, THE UNITED STATES CONGRESS SET ASIDE APPROXIMATELY 200,000 ACRES OF GOVERNMENT LAND FOR THE PURPOSE OF ESTABLISHING A HOMESTEADING PROGRAM FOR PERSONS OF AT LEAST 50 PERCENT HAWAIIAN ANCESTRY. IN ADDITION, THE HAWAIIAN HOMES COMMISSION WAS CREATED TO ADMINISTER THESE LANDS AND WAS AUTHORIZED TO:

FIRST, LEASE RESIDENTIAL, AGRICULTURAL, OR PASTORAL LOTS TO ELIGIBLE HAWAIIANS FOR 99-YEAR PERIODS AT A RENTAL OF ONE DOLLAR PER YEAR;

SECOND, OFFER FINANCIAL ASSISTANCE TO INDIVIDUAL HOMESTEADERS THROUGH LOW-INTEREST LOANS FOR AGRICULTURAL DEVELOPMENT AND HOME CONSTRUCTION; AND

THIRD, PROVIDE AGRICULTURAL AND OTHER EXPERTS TO AID THE HOMESTEADERS IN DEVELOPING THEIR FARMS AND RANCHES.

THESE DUTIES HAVE BEEN, AND CONTINUE TO BE, CARRIED OUT.

WHEN HAWAII BECAME A STATE IN 1959, CONGRESS REQUIRED, AS A CONDITION OF ADMISSION, THAT THE HAWAIIAN HOMES COMMISSION ACT BECOME A PROVISION OF THE HAWAII STATE CONSTITUTION. AT THIS TIME, TITLE TO THE HAWAIIAN HOME LANDS AND RESPONSIBILITY FOR MANAGING THE ACT WERE TRANSFERRED TO THE STATE.

HOWEVER, THE FEDERAL GOVERNMENT, IN AN EFFORT TO PERPETUATE ITS DEDICATION TO ASSIST NATIVE HAWAIIANS, REQUIRED THAT ANY AMENDMENTS BY THE STATE WHICH MIGHT DIMINISH THE RIGHTS OF NATIVE HAWAIIANS MUST BE CONSENTED TO BY THE UNITED STATES. IT IS FOR THE PURPOSE OF RENDERING CONGRESSIONAL CONSENT TO STATE PASSED HHCA AMENDMENTS THAT THIS JOINT RESOLUTION HAS BEEN PRESENTED.

THE PRIMARY AMENDMENT UNDER CONSIDERATION, ACT 272 OF THE HAWAII SESSION LAWS OF 1982, REDUCES THE BLOOD QUANTUM REQUIREMENT FOR A HAWAIIAN HOMESTEAD LESSEE'S SPOUSE OR CHILDREN TO ASSUME HIS UNEXPIRED HOMESTEAD INTEREST UPON HIS DEATH.

CURRENTLY, A SUCCESSOR MUST MEET THE 50 PERCENT REQUIREMENT IMPOSED BY LAW UPON ORIGINAL LESSEES. THE AMENDMENT WOULD PERMIT SPOUSES OR CHILDREN OF 25 PERCENT HAWAIIAN ANCESTRY TO ASSUME A LEASE.

MANY INSTANCES HAVE ARISEN WHERE ORIGINAL HOMESTEADERS HAVE SPOUSES WHO ARE NON-NATIVE HAWAIIANS AND BECAUSE OF THE PRESENT SUCCESSOR PREREQUISITE OF AT LEAST 50 PERCENT HAWAIIAN ANCESTRY, NEITHER THE HOMESTEADER'S SPOUSE NOR OFFSPRING HAVE THE MINIMUM BLOOD REQUIREMENT TO QUALIFY. THE DEATH OF A LESSEE THUS OFTEN RESULTS IN THE EVICTION OF HIS OR HER SPOUSE AND CHILDREN.

THE LEGISLATORS AND GOVERNOR OF THE STATE OF HAWAII ARE CONVINCED THAT THIS SITUATION THREATENS FAMILY STABILITY AND SECURITY AND FRUSTRATES THE INTENT OF THE HAWAIIAN HOMES COMMISSION ACT. WITH THE CONCURRENCE OF THE DEPARTMENT OF INTERIOR, THE HAWAIIAN HOMES COMMISSION, AND THE OFFICE OF HAWAIIAN AFFAIRS, THEY HAVE CONCLUDED THAT THE NATIVE HAWAIIAN LESSEES SHOULD BE PROVIDED WITH ASSURANCES THAT THEIR CLOSEST FAMILY MAY SUCCEED THEM IN ORDER TO ENCOURAGE STABILITY AND THE IMPROVEMENT OF PROPERTY AS WELL AS TO AVOID INHUMANE RESULTS.

NEVERTHELESS, IT MUST BE EMPHASIZED THAT THE PROPOSED AMENDMENT APPLIES ONLY TO THE SURVIVING SPOUSE AND CHILDREN AND THAT ALL OTHER SUCCESSORS TO HOMESTEAD LEASES MUST STILL MEET THE EXISTING 50 PERCENT CRITERIA.

FURTHERMORE, THE AMENDMENTS TO ACT 272 REFLECT ANOTHER CONCERN TO NATIVE HAWAIIANS. CURRENTLY, IF A LESSEE DIES WITHOUT HAVING DESIGNATED A SUCCESSOR, THE HHCA REQUIRES THAT THE DEPARTMENT OF HAWAIIAN HOME LANDS SELECT A SUCCESSOR FROM AMONG THE LESSEE'S RELATIVES, INCLUDING SPOUSE, CHILDREN, GRANDCHILDREN, NIECES, AND NEPHEWS.

SHOULD THE DEPARTMENT BE SUCCESSFUL IN CONTACTING ALL QUALIFIED RELATIVES, THE HAWAIIAN HOMES COMMISSION MUST, "SOMEHOW", SELECT THE SUCCESSOR. OBVIOUSLY, THIS HAS NOT BEEN AN EASY TASK, SINCE THERE CAN ONLY BE ONE SUCCESSOR WHILE SEVERAL FAMILY MEMBERS INEVITABLY FEEL DESERVING. THE LANGUAGE SUBMITTED FOR APPROVAL THEREFORE LIMITS SELECTION OF A QUALIFIED SUCCESSOR BY THE COMMISSION TO A SPOUSE, OR IF NONE, THEN THE CHILDREN. IF THERE IS NEITHER A SPOUSE NOR CHILDREN, THE LEASE WILL BE CANCELED. THIS PLACES THE ONUS ON THE LESSEE TO DESIGNATE A SUCCESSOR.

ADDITIONALLY, AT THE RECOMMENDATION OF THE DEPARTMENT OF INTERIOR, CONGRESSIONAL CONSENT IS BEING SOUGHT FOR VIRTUALLY EVERY AMENDMENT ADOPTED BY THE STATE SINCE 1959. ALTHOUGH INITIALLY, ONLY 14 OF THE AMENDMENTS WERE THOUGHT TO HAVE NEEDED CONSENT, IT WAS DETERMINED BY THE FEDERAL-STATE TASK FORCE ON HAWAIIAN HOME LANDS, A PANEL COMPOSED OF MEMBERS FROM THE DEPARTMENT OF INTERIOR AND THE STATE OF HAWAII, THAT ALL 53 AMENDMENTS SHOULD BE PROPOSED FOR CONSENT, IN ORDER TO AVOID ANY CONFUSION IN THE FUTURE AS TO THE LEGALITY OF ANY OF THE REVISIONS. I AGREE THAT THIS WOULD BE AN APPROPRIATE STEP THAT WOULD IN NO WAY ENDANGER THE RIGHTS OR PRIVILEGES CREATED BY THE ACT.

THE SHEER VOLUME OF AMENDMENTS PROPOSED FOR RATIFICATION MAY APPEAR IMPOSING, AND SOME, INCLUDING A MINORITY IN THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, MAY ARGUE THAT MORE DETAILED STUDY OF THESE AMENDMENTS IS NECESSARY. HOWEVER, MR. CHAIRMAN, NO ONE HAS EVEN SUGGESTED THAT ANY OF THE AMENDMENTS EITHER USURP THE AUTHORITY OF THE HAWAIIAN HOMES COMMISSION OR DIMINISH THE RESOURCES AVAILABLE TO THIS PROGRAM. INSTEAD, IT IS RECOGNIZED BY ALL KNOWLEDGEABLE PARTIES THAT CONGRESSIONAL RATIFICATION OF THE STATE AMENDMENTS, SUCH AS THE ADDITION OF "AQUACULTURE" TO PERMISSIBLE ACTIVITIES,

AND THE MANNER OF FUNDING STRUCTURE, IS APPROPRIATE SIMPLY TO AVOID ANY CONFUSION OR CHALLENGES.

MR. CHAIRMAN, I DO NOT THINK THAT THE RESPONSIBILITY OF CONGRESSIONAL OVERSIGHT AND REVIEW OF THESE MATTERS SHOULD BE TAKEN LIGHTLY. HOWEVER, I BELIEVE THAT A REVIEW OF THE AVAILABLE RECORD WILL DEMONSTRATE THAT RATIFICATION OF THESE AMENDMENTS IS BOTH APPROPRIATE AND NECESSARY.

MR. CHAIRMAN, THIS MEASURE REPRESENTS THE FIRST TIME THE STATE OF HAWAII HAS SOUGHT THE CONSENT OF CONGRESS FOR AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT.

THESE AMENDMENTS HAVE BEEN CAREFULLY DEBATED AND REVIEWED BOTH ON THE STATE AND FEDERAL LEVELS, AND I BELIEVE THEY REPRESENT A REASONABLE MEANS OF FORWARDING THE PURPOSES OF THE ORIGINAL ACT, THAT OF RETURNING NATIVE HAWAIIANS TO THE LAND FOR THE PROSPERITY AND PERPETUITY OF THE HAWAIIAN RACE.

THEREFORE, MR. CHAIRMAN, I URGE YOUR COMMITTEE TO FAVORABLY REPORT H.J. RES. 17 IN ITS CURRENT FORM.

Senator WEICKER. Congressman Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, A U.S. REPRESENTATIVE FROM THE STATE OF HAWAII

Mr. AKAKA. Thank you very much, Mr. Chairman. As the sponsor of H. J. Res. 17, it certainly is a pleasure for me to present my remarks today before this Committee. I want to applaud the sensitivity and wisdom of Chairman McClure for scheduling this hearing today, and I want to commend you, Mr. Chairman, for your leadership of this hearing.

I also deem it a pleasure to welcome those who have come thousands of miles from Hawaii to testify at this hearing and to indicate their commitment to the needs of the native Hawaiian concerns.

Finally, I want to commend my good Senator Daniel K. Inouye and also Senator Spark Matsunaga for their efforts in bringing this measure to the forefront in the Senate. Mr. Chairman, I also recognize, as you mentioned, that there is a time constraint that the committee is under today, and I will therefore request that my prepared remarks be included in today's proceedings.

Senator WEICKER. It will be included in its entirety.

Mr. AKAKA. Mr. Chairman, I will say simply that the importance of this bill cannot be overemphasized. Without this legislation, the future of the native Hawaiian families and fulfillment of one of the most significant programs ever created by Congress are in jeopardy. Indeed, it would be unconscionable for us not to act.

I am happy to have the Senate considering this and I strongly urge your thoughtful consideration and favorable consideration of this measure. Thank you very much.

[The prepared statement of Mr. Akaka follows:]

REMARKS OF THE HONORABLE DANIEL K. AKAKA

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES IN SUPPORT OF H.J.RES. 17, TO RENDER CONSENT TO AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920

August 13, 1986

Mr. Chairman, as the sponsor of H.J.Res. 17, it is a pleasure for me to present my remarks on H.J.Res. 17, to render consent to amendments enacted by the Legislature of the State of Hawaii from 1959 and 1985 to the Hawaiian Homes Commission Act of 1920, before your Committee. Indeed, fewer Committees of Congress have established as fine and decent a record of interest in the concerns of native Hawaiians as this one. I applaud, once again, the sensitivity and wisdom of Chairman James McClure for bringing this vital measure to the forefront.

It is also a pleasure for me to welcome our witnesses from Hawaii, who, committed to the needs of native Hawaiians, have journeyed those thousands of miles to make known their concerns.

Finally, I commend Senators Daniel Inouye and Spark Matsunaga for their efforts in ensuring the expedited consideration of this measure.

Mr. Chairman, in order to understand the importance of this legislation, one must first recognize the legislative history upon which it is based--the Hawaiian Homes Commission Act of 1920.

HONORABLE DANIEL K. AKAKA
August 13, 1986

It was in 1921 that the U.S. Congress enacted the Hawaiian Homes Commission Act of 1920 (HHCA), an act which set aside certain public lands in trust, to be utilized for the rehabilitation of native Hawaiians. Native Hawaiians are for purposes of this act those persons of at least fifty percent aboriginal Hawaiian blood.

The homesteading program created by the HHCA continued essentially as a Federal program for nearly fourty years; in 1959, upon the insistence of the U.S. Congress, the HHCA was incorporated into the Hawaii State Constitution as a requirement for that State's admission into the Union. The U.S. thereby relinquished title to the home lands, and the responsibility for administration of the act passed to the State. In addition, the HHCA was deleted from the U.S. Code.

However, the Congress expressly reserved the power to consent to certain amendments to the HHCA through Section 4 of the Hawaii Admission Act. Section 4 provides that the HHCA may be amended in Hawaii by way of constitutional amendment or customary legislation. A restricting provision, however, makes clear that any amendments decreasing benefits to beneficiaries or changing the qualifications of lessees require the consent of Congress.

Interestingly, nearly twenty-five years have passed since Hawaii's admission to the Union, yet Congress has not once attempted to fulfill the self-created, self-imposed obligation expressed in Section 4. To be

frank, this is in part due to a lack of clear intent on the modus operandi, coupled with a lack of initiative on the part of all parties. The intent of H.J.Res. 17, therefore, is to provide U.S. consent to amendments enacted by the State of Hawaii.

Since 1959, the legislature of the State of Hawaii has adopted fifty-three amendments to the HHCA, all primarily designed to facilitate the operations of the Hawaii Homes Program. Of this total, approximately fifteen amendments clearly require the consent of Congress pursuant to Section 4. Some of these amendments are by their own terms not effective until U.S. consent is granted. Other amendments are by their terms effective until they are held otherwise, because of the absence of U.S. consent.

Three years ago, the Federal-State Task Force on the Hawaiian Homes Commission Act determined that the consent-deficient scenario presents the "potential for mischief" as it is not clear whether amendments, duly enacted by the State, are effective or not. It was, hence, that Task Force which recommended that the consent of Congress be sought and obtained as soon as possible.

Consequently, I introduced H.J.Res. 17. H.J.Res. 17 will put the Congress on record as having fulfilled its long-overdue responsibility. Additionally, it will formalize, by virtue of its accompanying report, the method of consent intended by Congress so that future amendments to

the HHCA will not experience similar inactivity. Certainly, after twenty-five years, the time for action is here.

It would be an understatement for me to say that this bill significantly impacts the native Hawaiian beneficiaries of the HHCA. For, in fact, this measure represents the means by which the original intent of the HHCA will be fostered; that is, to return the native Hawaiian to the land in order that the Hawaiian race may be perpetuated. As I indicated to my colleagues in the House, without the authority to enforce the proposed changes, we are faced with a State of Hawaii which believes that it is not able to confront current forces that threaten the stability and security of the Hawaiian family, and therefore, of the act itself. It would be unconscionable for us to allow this scenario to be maintained.

Mr. Chairman, H.J.Res. 17 has undergone extensive review in the House of Representatives, culminating in a speedy passage with the bipartisan support of both the Chairman of the Interior Committee, Mr. Udall, as well as the Ranking Minority Member, Mr. Young of Alaska. It has the support of the Administration, the entire Hawaii Congressional delegation, the Governor of the State of Hawaii, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and a number of other native Hawaiian organizations.

Too, the CBO reports that there will be no cost to the Federal, State or local governments.

Mr. Chairman, Members of the Committee, I urge your thoughtful consideration of this measure.

Senator WEICKER. Congressman, thank you very much.

The Chair recognizes the arrival of Senator Ford to the hearing.

Senator FORD. Did I miss Senator Inouye's statement?

Senator INOUYE. You missed a great statement, Senator.

Senator FORD. Could I have a copy of it so I can read it? Okay, thank you.

Senator WEICKER. Dan, would you like to go ahead and introduce as they come to the table the panel that we have today?

Senator INOUYE. Yes, I would like to present to you first the director of the Hawaiian Homes Commission of the State of Hawaii, Ms. Georgiana Padeken.

Senator WEICKER. Ms. Padeken. And we also have from the Department of the Interior Deborah Howard. Is Deborah here? Deborah, come right on up. And Mr. Gard Kealoha, trustee of the Office of Hawaiian Affairs. Is Mr. Kealoha here?

Now, as I indicated to all of you, your statements in their entirety will be placed in the record at this point. Why do we not start in the order actually that I have the panel down, and ask Deborah to proceed, followed by Georgiana, and then Gard? Thank you.

STATEMENT OF DEBORAH RYAN HOWARD, ATTORNEY ADVISER, DIVISION OF GENERAL LAW, OFFICE OF THE SOLICITOR, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY CECIL HOFFMAN, FORMER MEMBER OF THE FEDERAL-STATE TASK FORCE ON HAWAIIAN HOMES

Ms. HOWARD. Thank you. I do promise to be very brief.

Senator WEICKER. Can you put the microphone up a little bit closer to you so we can hear you better?

Ms. HOWARD. All right. I am Deborah Ryan Howard. I am from the Solicitor's Office of the Department of the Interior. With me today is Ms. Cecil Hoffman, who was a representative of the Department on the Federal-State Task Force on the Hawaiian Homes Commission Act.

The task force was convened in 1981 to make recommendations to the Governor of Hawaii and to the Secretary of the Interior with regard to ways to better effectuate the Hawaiian Homes Commission Act. The task force issued a report in 1983 which I understand has been made available to Congress.

One of the key recommendations of the task force was that the amendments to the Hawaiian Homes Commission Act that had been passed by the State of Hawaii between 1959 to date be submitted to the United States Congress for consent. This is pursuant to Section 4 of the Hawaii Statehood Act. The task force's report contained an analysis of the amendments passed by the State from 1959 to the time of the Commission. That analysis has been updated by the Department and attached to our prepared statement, so it is available to you.

The update does cover amendments through June 30, 1985. House Joint Resolution 17 would evidence Congess's consent to all the amendments passed by the State between 1959 and June 30, 1985. The one exception is Act 112. This was an amendment passed in 1981 which is in conflict with later amendments. The bill before you would evidence consent to the later amendments. Although ar-

guably consent is not required for all the amendments passed by the State to the Hawaiian Homes Commission Act, we believe that the prudent course is to consent to all the amendments so that there are no questions at this stage as to what amendments are properly part of the Act.

The Department therefore supports the legislation before you. The Department does not take a position on the merits of individual amendments because we believe that they concern policy issues that are properly a concern of the State of Hawaii. Because the State has acted through its legislature to enact these amendments, we believe it is prudent and appropriate to submit them to Congress for consent.

Thank you. That concludes my statement.

[The prepared statement of Ms. Howard follows:]

A BILL "TO CONSENT TO AMENDMENTS ENACTED BY THE LEGISLATURE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920" BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE

The Interior Department welcomes this opportunity to respond to the Committee's request for its views on H.J. Res. 17, a bill "To consent to amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920."

At the outset, we should like to provide some background on the Hawaiian Homes Commission Act and the Department of the Interior's role in it over the past several years.

The Hawaiian Homes Commission Act was enacted by the Congress in 1921 as a homesteading program, to place native Hawaiians --- defined as those of 50% or more Hawaiian blood -- on land in Hawaii designated for that purpose. Approximately 200,000 acres were defined as "available land" under the Act. Because at the time the Department of the Interior had general responsibility for most of the territories of the United States, including Hawaii, the Secretary was given certain statutory responsibilities in the Act. One of these, pertaining to land exchanges, remains in the Act today.

In section 4 of the 1959 Hawaiian Statehood Act, Congress required that the Hawaiian Homes Commission Act, be "adopted as a provision of the Constitution of said State" of Hawaii and described the Act as "a compact with the United States." Section 4 further provided that following Statehood, the Hawaiian Homes Commission Act may be amended

in Hawaii through either an amendment to the State Constitution or Hawaii's usual legislative process. Any such amendment, however, is "subject to . . . the consent of the United States" unless it relates to administration or to the powers and duties of State officers, or it increases benefits to lessees of Hawaii homelands.

A considerable number of amendments to the Hawaiian Homes Commission Act have been adopted by the State since Hawaii's admission, many of which require United States consent under the language of section 4. However, the consent of the United States has not been obtained. So far as we have been able to establish, United States consent was never sought throughout those years.

By 1980, only about 40,000 acres of the 200,000 acres of available lands provided for the Commission had, in fact, been leased to the native Hawaiian beneficiaries of the Act. Many thousands of native Hawaiians had sought sites for homes, farms, or ranches and had not yet obtained them. About 9,000 native Hawaiians are currently on the "waiting list."

It was these circumstances that led the Governor of Hawaii and the Secretary of the Interior, in 1981, to establish a Federal-State Task Force on the Hawaiian Homes Commission Act. The charge to the Task Force was to "make recommendations to the Governor of Hawaii and to the Secretary of the Interior on ways to better effectuate the purposes of the Hawaiian Homes Commission Act . . . ." The Task Force

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met during 1982 and 1983, submitted a report containing its "Findings and Recommendations" to both officers on August 15, 1983, and then disbanded.

That report has been made available to the Congress. The report contains 134 recommendations, some of which call for action by the Department of the Interior and the United States and some by the State of Hawaii. The Secretary of the Interior in September 1983 endorsed generally the recommendations for action by the Interior Department. Among them was the recommendation that the Department of the Interior serve as the lead Federal agency on matters of Federal concern that relate to the Hawaiian Homes Commission Act, and that is our role here today. Another recommendation was that the consent of the United States be obtained as soon as reasonably possible "to all amendments to the [Hawaiian Homes Commission Act] that are required to have such consent under the Hawaii Admission Act" (Recommendation No. 9).

The legislation before the Committee today would evidence the consent of the United States, pursuant to section 4 of the Statehood Act, to amendments enacted by the State Legislature of Hawaii to sections of the Hawaiian Homes Commission Act, 1920. The Department of the Interior recommended the legislation before you to the House of Representatives in November 1985 and continues to support enactment of the bill.

We are providing the Committee an analysis, originally composed for the use of Task Force members but recently edited and expanded to reflect further information and amendments enacted by the State since the time of the Task Force deliberations, that explains what amendments have been adopted from Statehood up to June 30, 1985, and which ones require United States consent. While the bill could be limited to those amendments that fall unarguably within the consent requirements of section 4, it is the position of the Department that, given the passage of so many years and so many amendments, and believing as we do that the Act should now be placed on as secure a footing as possible, it is wisest to seek consent to all amendments. The listing through June 30, 1985, attached, includes all amendments enacted by the Legislature to date, with one exception later explained.

As our analysis indicates, the subject of the amendments are all peculiarly matters of State concern. Many are and have at all times been free of controversy in Hawaii, but others have been the subject of some argument. One such amendment is Hawaii's Act 272 of 1982, which pertains to successorship to a lease of land from the Homes Commission upon the death of the lessee. Under existing law, any successor must be of 50% Hawaiian blood. Under Act 272, a surviving spouse or child may succeed to the lease if he or she is only 25% Hawaiian blood.

It is the position of the Department of the Interior that the policy questions with which Hawaii's Act 272 and the other amendments deal are issues that ought to be resolved in Hawaii. The State has resolved the issues by enactment of the amendments, and it is therefore our position that the Department should defer to those decisions and that the United States Congress is properly being asked to consent to the amendments.

You will note that H.J. Res. 17 expressly excludes from consent Act 112 of 1981. The reason is that it came to the attention of the Task Force in its examination of the Hawaiian Homes Commission Act and the amendments since 1959 that Act 112 contains provisions that are in irreconcilable conflict with later amendments to the Act. This is particularly evident in connection with leasehold appraisals, with Act 112 prescribing one approach, and Act 272 of 1982 a different one. It could be argued that the 1981 law was in 1982 repealed by implication, but because repeals by implication are disfavored, and because the objectives of the bill are clarity of result and certainty as to the content of the Homes Commission Act, we support the explicit exclusion of Act 112.

A final point is that the Task Force recommended, and we concur, that in the future, amendments should be sent forward for concurrence as they are enacted, following a careful assessment as to whether the consent of the United States is required as a matter of law. In the future, therefore, we anticipate that consent by the Congress will be sought in a narrower manner.

This concludes my prepared testimony. We will be happy to answer any questions the Committee might have.

November 1985

Analysis of amendments to the Hawaiian Homes Commission Act, 1959-June 30, 1985, in light of the consent requirement of the Hawaii Statehood Act

To what extent must the United States be involved in the amendment of the Hawaiian Homes Commission Act, and has it been sufficiently involved, as a matter of law, to the present time?

Section 4 of the Hawaii Statehood Act provides as follows:

> As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the Constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined by said Act, shall be used only in carrying out the provisions of said Act.

The statutory requirement:

When section 4 is parsed, it permits the following amendments to the Hawaiian Homes Commission Act ("HHCA") without the consent of the United States:

(1) Amendments to sections 202, 213, 219, 220, 222, 224, and 225, and to "other provisions relating to administration";

(2) Amendments to paragraph 2 of section 204, to sections 206 and 212, and to "other provisions relating to the powers and duties of officers other than those charged with the administration of said Act"; and

(3) Amendments to increase the benefits to lessees of Hawaiian home lands.

The consent of the United States would be required in the case of amendments or new legislation on the following subjects:

(4) Provisions that permit an increase in the encumbrances that may be placed on Hawaiian home lands by officers other than those charged with the administration of the Act; and

(5) Provisions that change the qualifications of lessees of Hawaiian home lands.

On two subjects, change is impermissible, with or without the consent of the United States:

(6) The Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund may not be the subject of amendments that impair or reduce them; and

(7) All proceeds and income from "available lands" may be used only in carrying out the provisions of the Act.

A residual provision is required, and the language of section 4 that precedes the proviso contains it. Subject to the exceptions that follow, section 4 states that the Hawaiian Homes Commission Act may be amended or repealed only with the consent of the United States. Hence,

(8) any change in the Act not described in paragraphs (1) through (7) above would require the consent of the United States.

Since the date of Hawaii's admission to the Union, the United States has not consented (nor, so far as can be established, was it asked to consent, prior to January 1985 when H. J. Res. 17 was introduced) to any amendments to the Hawaiian Homes Commission Act. The question, then, is whether any amendments have been enacted that do not fall into categories (1) through (3) above.

The short answer is that there have been amendments that, under section 4 of the Statehood Act, require the consent of the United States as a condition precedent to their effectiveness. Under the provisions of State law enacted with some of those amendments, some are by their terms not effective until the U.S. consents; others are by their terms effective until they are held otherwise, because of the absence of U.S. consent. In the circumstances, all amendments

that are subject to the consent provision should be submitted forthwith to the United States Congress for approval.1/

It will be observed that the language of section 4, quoted above, contains an ambiguity. Exempt from the consent requirement are specified sections "and other provisions relating to the powers and duties" of certain officers. Are all amendments to the specified sections exempt from the consent requirement, or are amendments to those sections exempt only to the extent that they relate to "administration" or to "the powers and duties" of certain officers? The legislative history of section 4 is unhelpful. It too is ambiguous, hinting first at the former conclusion, and later at the latter.2/

1/ Neither the Statehood Act itself nor its extensive legislative history sheds light on the question of how "the consent of the United States" is to be evidenced. While Federal consent is sometimes evidenced by the approval of the President or of some lesser Federal official, that level of consent is usually the product of language so stipulating. In the absence of any provision or suggestion to the contrary, it thus seems appropriate that Federal consent in the case of amendments to the HHCA be evidenced by an Act of Congress. That conclusion appears to have been accepted by the interested parties, including the Legislature of Hawaii, whose enactments on this subject have sometimes referred to "the consent of the United States Congress". (See, for example, Session Laws of Hawaii, 1981, Act 112, section 5.)

2/ A legislative history paper, prepared for the Task Force, shows that from the 80th through the 84th Congresses, Congressional committee reports suggested that any amendment to the sections specified would be exempt from the consent requirement. For example, the Senate Interior Committee in the 83d Congress stated that "certain sections of the [Hawaiian Homes Commission] Act pertaining to its administration may be amended by the State without such consent." (S. Rept. No. 886, p. 19, 83d Cong.) But in the Congresses thereafter, through the 86th, the contrary suggestion appears. The House Interior Committee, for example, stated in its 1959 report that:

> While the new State will be able to make changes in the administration of the Act without the consent of Congress, it will not be authorized, without such consent, . . . to disturb in other ways its substantive provisions to the detriment of the intended beneficiaries. (H. Rept. No. 32, p. 19, 86th Cong.)

The latter, being both more carefully stated and later in time, provides the more useful guidance, but it involves sufficient straining to be short of dispositive. It is however, consistent with the construction adopted for purposes of this Analysis.

If all amendments to those sections, regardless of their subject matter, are not exempt from the consent requirement, one might then ask why any section numbers are provided at all. It would, under that construction, be sufficient to exempt amendments "relating to administration." On the other hand, it is clear from the statutory language that the Congress' purpose was to guard against damage to the interests of native Hawaiians, inflicted by an unsympathetic State Legislature or Constitutional Convention. The Congress did this by requiring that most changes of substance could not be effective until those changes are the subject of approval by "the United States." An unsympathetic State Legislature could in fact inflict grave damage to the interests of native Hawaiians by amendment of the sections specified, by legislative legerdemain that is easy to imagine, and it is reasonable to suppose that the Congress meant to foreclose that possibility. In the circumstances, this paper assumes that the Congress intended that the consent requirement would apply to amendments to the sections specified, if such amendments do not concern "administration" or the "powers and duties" of certain officers.

One further matter deserves comment, before the analysis of post-Statehood amendments commences. It will be wondered why, with so clear a statutory requirement, amendments to the Act have not been transmitted routinely from Hawaii to the U.S. Congress for consideration and consent. While it has not been possible to discover the answer with certainty, it seems likely that a contributing consideration has been a concern on the part of some beneficiaries of the Act that the Congress might, if it turned to the statute, modify it so as to reduce the benefits available to native Hawaiians. There is, of course, substantial doubt as to whether the Congress has the authority now to amend the Act on its own inititative.[3/] But that

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3/ Under section 4 of the Statehood Act, the Hawaiian Homes Commission Act now constitutes a "compact" between the U.S. and the State, and by definition a compact is at least bilateral. Under the terms of that compact, set forth in section 4, the State may amend the Act in some particulars without U.S. consent. Beyond that, it seems sound to conclude that neither party may act to amend the HHCA without the concurrence of the other. As to the amendment of section 4 of the Statehood Act, it follows that the Congress could not act unilaterally on that subject either. Section 4 itself constitutes a compact; and given the requirements of the Statehood Act that the voters of Hawaii were to agree to the terms of the Act, and particularly its section 4, as a condition precedent to Hawaii's admission (sec. 7(b), 73 Stat. 4, 7), it seems clear that a popular referendum would be necessary in Hawaii to ratify any change in the section made by the United States. The two governments would be required to act in concert. The State cannot change the compact unilaterally, given the U.S. Constitutional prohibition in Article I, section 10, against the impairment of contracts. And while the law on the subject is slight (see Grad, Frank P., Federal-State Compact: A New Experiment in Co-operative Federalism, 63 Columbia L.R. 825,848 (1963)), the United States would probably violate the due process clause of the (footnote continued)

issue aside, there is certainly no doubt that the Congress did in section 4 of the Statehood Act require consent to certain amendments--its motive clearly being the protection of the interests of the beneficiaries. Fears as to what the Congress might do while providing that protection cannot possibly overcome the statutory requirement for consent.

Amendments to the Homes Commission Act, 1959-June 30, 1985:

To reach the conclusion that U.S. consent should be sought, it seems sufficient for purposes of this paper to compare the language of the Homes Commission Act at the time of admission, August 21, 1959, with its language today.4/ That comparison reveals the following:

Section 1, the title of the statute, has not been amended.

Section 2, a cross-reference, has not been amended.

Section 201, definitions, was amended in 1963 in a nonsubstantive, perfecting manner. The amendment (changing "Territory" to "State") relates to administration, and thus does not require U.S. consent.

Section 202 concerns the creation and composition of the Hawaiian Homes Commission and the Department of Hawaiian Homes Lands, and the employees of each. It was amended in 1963, 1965, 1977, 1984, and 1985, but because the subject of the section and all amdnements to it relate directly to administration, the consent of the U.S. is not required.

Section 203, the designation of "available lands," was also amended in 1963 in a nonsubstantive, perfecting manner, and does not require U.S. consent.

Section 204, pertaining to the Commission's relationship to the Board of Land and Natural Resources (but excluding section 204(2), all the changes to which appear to relate either to administration or to the duties of officers other than those charged with the administration of the Homes Commission Act, or they increase bene-

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Fifth Amendment if it undertook to act alone. (Lynch v. U.S., 292 U.S. 571, 579 (1934).)

4/ A purist would, rightly, insist that a full anaylsis requires examining each amendment as passed, instead of each section as it currently exists. Practical considerations, however, dictate the latter course, for it is only the current condition of the section (i.e., amended to date) that could warrant inviting the U.S. Congress to consider it.

fits to native Hawaiians),[5] was amended by the Legislature in 1963, 1965, 1976, and 1985, and by the State Constitutional Convention in 1978. The amendments (1) eliminate the requirement for approval by the Secretary of the Interior when land that is under a lease that contains a withdrawal clause is restored to its former status as "available land" by action of the Commissioner of Public Lands (now the Board of Land and Natural Resources); (2) eliminate the provision that not more than 20,000 acres may be settled in a five-year period; (3) remove the Governor as one of the officers who must approve land exchanges; (4) permit the exchange of "available lands" for private, as well as public, lands; and (5) provide that general leases issued after June 30, 1985, must contain a provision permitting the termination of the lease if the land is needed for the purposes of the Act. (Other changes of a nonsubstantive, perfecting sort have also been made.) Of these changes, those numbered (1) and (3) relate to administration, as well as to the powers and duties of other than Homes Commission officers; and those numbered (2), (4), and (5) increase, at least potentially, the benefits available to native Hawaiians. Thus, the consent of the United States is not required.

Section 205, limiting sales and leases, has not been amended.

Section 206, concerning the powers and duties of certain officials with respect to public lands, has been amended only in a nonsubstantive, perfecting manner, and the amendments do not require the consent of the United States.

Section 207, pertaining to leases and licenses to native Hawaiians, was amended in 1963, 1976, 1981, 1983, and 1985. Except for the amendments of 1983 and 1985, all of the substantive amendments apply to subsection (a) only. The 1976 amendments are, according to the State statute (Laws 1976, Act 23), to become effective when the consent of the United States has been obtained. The 1981 amendments are, according to that State statute (Laws 1981, Act 90, sec. 11), subject to a severability clause, so that, in effect, the amendment becomes immediately effective and ceases to be so only when it is held to be ineffective for want of U.S. consent.[6]

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[5] Because section 204(2) is expressly named in section 4 of the Statehood Act, and because section 4 describes as exempt from the consent requirement provisions that deal with the subject matter of section 204(2), it is reasonable to conclude that U.S. consent is not required for changes made in it. On the other hand, those changes have the effect of permitting the placing of encumbrances on Hawaiian home lands, under Hawaii's general land management laws, and as such they may run afoul of the provision of section 4 concerning encumbrances which "shall not be increased" without consent. To avoid such an argument, strained as it may appear, it would be wise to obtain U.S. consent to the section 204(2) changes.

[6] The 1981 severability clause provides:

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The 1976 amendments to section 207(a) are two in number, occur only in the proviso, and are extraordinarily limited in their application. The proviso pertains to the Kalanianaole Settlement on Molokai.

> -- Without the first amendment, the lessee may choose where on his leased farm lot at the Kalanianaole Settlement his residential lot is to be located, but if the amendment were to become effective, the choice would be made by the Department of Hawaiian Home Lands; and
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> -- In general, under section 207, residence lots are not to exceed one acre, but in the Kalanianaole Settlement, they may exceed one acre but cannot exceed four acres. The second of the 1976 amendments states that the Department of Hawaiian Home Lands may, with respect to the Kalanianaole Settlement, designate residential lots of less than 10,000 square feet (i.e., under 1/4 acre).

Because the first of these 1976 amendments would diminish the authority of a lessee, U.S. consent is required, and the Legislature appears to have thought so in light of the qualified effective date that it attached, as noted above. The second amendment appears to be surplusage as a matter of law, inasmuch as the section without that addition contains a ceiling on residential lots, but no floor. U.S. consent is thus unnecessary.

The 1981 amendment adds "aquaculture" at appropriate points, as an addition to agricultural or pastoral purposes. Because that would

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> The provisions of these legislative amendments are declared to be severable, and if any section, sentence, clause, or phrase of the legislative amendments or any of them, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these legislative amendments or the application thereof shall not be affected.

(The 1978 severability clause does not differ. Laws 1978, Act 229, § 11.)

As stated above, one of the effects of this clause is to permit amendments to become effective prior to the receipt of U.S. consent, and to remain effective without it, unless and until it is held that U.S. consent is required. In that event, the amendment under scrutiny falls until Federal consent is obtained. But other amendments carried in the same statute would be unaffected, unless or until they too are tested and held to require U.S. consent.

expand the possible benefits to native Hawaiians, the consent of the U.S. is not necessary. The point is academic here, because the section requires consent for other reasons, but the position is taken below that if a severability clause affects a section, then consent should be sought, this on the ground that the Legislature by using the severability clause has implied that it believes that consent might be required. The doubt thus raised should be eliminated by seeking the consent of the U.S.

The 1983 amendment, apart from changing the form of subsection (a) of section 207, effects a substantive change. Under that subsection prior to 1983, the Department of Hawaiian Home Lands was authorized to grant easements for telephone lines, electric power lines, gas mains, and the like "for terms of not to exceed twenty-one years . . .to public utility companies and corporations". The 1983 amendment eliminated the quoted words. While the amendment concerns administration, it also, potentially, reduces benefits to the beneficiaries -- to the extent that it permits easements to more recipients for longer periods, inferentially permitting greater withdrawals from lands otherwise available for homesteads -- and on that basis, U.S. consent ought to be obtained.

Section 207 was also twice amended in 1984, first to permit the development and construction by the Department of multifamily units, the second to require that commercial establishments that are the subject of leases be to "native Hawaiians" instead of to "lessees of the Department". While these changes probably increase benefits to lessees, thereby escaping the consent requirement, at least arguably they also decrease them, so U.S. consent ought to be obtained.

The 1985 amendments modify the provisions concerning licenses to the United States, arguably a matter of administration and thus free of the consent requirement; but they also modify the minimum and maximum acreage limitations on leases to native Hawaiians, some of which might be viewed as reducing benefits. Consent, thus, is required.

Section 208, concerning lease conditions, has often been amended: in 1963, 1967, 1973, 1974, 1978, 1981, and 1985. Except for amendments that are nonsubstantive and perfecting only, all of the amendments except one--the last set out below--either increase lessees' benefits or relate to administration:

-- Paragraph (1) was amended with respect to the disposition of a lease (adding "quitclaim"), and relates to administration.

-- Paragraph (3) adds "aquaculture" to approved uses, and eliminates a tree-planting requirement for lessees, both of which in effect expand benefits.

-- Paragraph (5), a general bar to alienation, provides that a lessee's interest in a tract is not subject to attachment for debts arising from loans by "agencies,"

even if the Department of Hawaiian Home Lands approves the loan. The term "agencies" was "governmental agencies" for some years following Statehood, but each change appears to expand benefits potentially, and thus does not require U.S. consent.

-- Paragraph (6), added in 1985, permits a lessee to mortgage his tract and the improvements thereon, provided the mortgage is insured by the FHA, VA, or another Federal agency and is approved by the Hawaiian Homes Commission.

However, a paragraph (8) was added following Statehood, and this paragraph was repealed in 1978. Paragraph (8) had permitted the Department of Hawaiian Home Lands to give loan guarantees. Its addition would increase benefits, and thus not require approval; its repeal, equally, diminishes benefits and does require approval, so U.S. consent is necessary. A severability clause (see footnote 6), suggests that the Legislature may have shared that view.

Section 209 pertains to lease succession, an unusually controversial subject in the Hawaiian Homes context. Amendments to the section can be divided into those dating from 1982, those from 1981, and all others (1959-80). In reverse order:

-- The pre-1981 amendments were perfecting and do not require U.S. consent.

-- The 1981 amendments were contained in two legislative enactments. Amendments carried in the first of these, Act 90, approved June 2, 1981, were minor: some nonsubstantive, perfecting changes and two additions concerning aquaculture. U.S. consent would not be required to any of these changes, but for the fact that the amendments to section 209 that were contained in Act 90 were subject to a severability clause, thereby suggesting that the State Legislature believed that they might be subject to the consent requirement. Such a suggestion from the Legislature should probably be viewed as sufficient to raise an informed doubt, and thus to trigger a request for U.S. approval so as to eliminate any doubt as to the status of the amendment. But the question need not be answered here because the later amendments very clearly require U.S. consent.

-- The later 1981 amendments, contained in Act 112, approved June 8, 1981, explicitly require U.S. consent. Those amendments are "to take effect upon the approval of the Governor of the State of Hawaii and with the consent of the United States Congress" (Laws 1981, Act 112, sec. 5). The Governor has approved. Some of those amendments are minor, but a major change relates to the valuation of a lessee's improvements in case he dies without qualified heirs, or his lease is cancelled, or

he gives it up. Under current law, the Department is to conduct an appraisal of the improvements on his leasehold, and is to pay that amount, less taxes due and certain debts, to the decendent's legal representative. The new standard for payment contained in Act 112 is more complex, represents a diminution of benefits at least in some cases, and is set out in a new section 210.5, discussed at that designation below.

-- The 1982 amendments change the blood quantum requirements for certain successors to a lessee (Act 272). A spouse or children need be only 1/4 Hawaiian; other relatives, in order to be designated successors, must continue to be of least 1/2 Hawaiian blood. If a lessee dies without a spouse or children, or without designating another qualified successor, then the value of his leasehold is to be appraised in the pre-1981 manner referred to above. (Whether the Legislature in Act 272 intended to repeal the new valuation provisions that had been added, subject to U.S. consent, by the second 1981 amendment (Act 112, discussed above) is not clear. That would seem, however, to be the effect of this latest amendment to section 209.) The 1982 amendments provide that they are to be effective "upon the approval of the Governor of the State of Hawaii with the consent of the United States."7/ The Governor has approved.

Section 210, on the cancellation of leases, has been amended only in a nonsubstantive, perfecting manner and requires no U.S. consent.

Section 210.5, pertaining to the valuation of improvements, has been accorded what appears to be unusual treatment by both the Legislature and the codifiers, so that its status is obscure. Confusion arises because:

-- Under section 209, at least until 1981, if a lease was cancelled or surrendered, or if the lessee died without leaving a relative qualified to succeed him, the Department of Hawaiian Home Lands was required to appraise the value of the improvements and growing crops and to pay that amount to the legal representatives of the deceased, less taxes due and certain debts owed.

-- In 1981, Act 112 amended section 209 to strike out much of the foregoing and to provide instead that in the circumstances referred to, the amount to be paid to the legal representative would be the amount determined under the formula set out in the new section 210.5. Reduced to essentials, that formula provides that for ten years after the commencement of the lease,

7/ This provision should probably be read as though there were an "and" after "Hawaii". That is the form the provision took a year earlier in Act 112. Without that small article, the Governor would surely be unacceptably constrained.

the value to be paid would be the original cost of improvements, plus interest at 7%; after ten years, appraised value would be paid, less the value of improvements that are "luxurious in nature." Clearly, the change induced by section 210.5 could reduce benefits to lessees, so Federal consent would be required. The Hawaii Legislature obviously agreed, for it provided that section 210.5 would not become effective until the Governor approved it and the U.S. Congress consented. The Governor did approve. Interestingly (but whether significantly or not is hard to determine), section 210.5 was set out in the Revised Laws of Hawaii, in the pocket part for use in 1982, as though it were a law already in effect -- but codifiers' notes following it reflected accurately the Congressional consent requirement. (In the later pocket parts, section 210.5 appears as a note -- and not as a law already in effect).

-- In 1982, in enacting the new succession language in section 209 that is discussed above at that designation, the Legislature reenacted the language of section 209 as it pertains to valuations substantially as it existed prior to the major amendment in 1981, wholly ignoring the amendments made by Act 112 of that year. To compound what seems to be confused treatment, the law codifiers, in the pocket part for use in 1983, set out as notes both section 209 and 210.5. Section 209 is displayed without the 1981 amendments that referred to the new section 210.5 (even though source notes indicated that that 1981 law is reflected) but section 210.5 is then set out in full, as derived from those same 1981 amendments. The treatment is at a minimum confusing, and it appears to be inconsistent.

Section 210.5 unquestionably requires U.S. consent -- assuming that the section has any current validity. Because it is in conflict with the later-amended section 209, however, it may be preferable to exclude it from a consent vehicle.

Section 211, on community pastures, has been amended only in a nonsubstantive, perfecting manner and does not require U.S. consent.

Section 212 relates to home lands returned to the control of the Board of Land and Natural Resources. The section was amended in a variety of particulars by the Constitutional Convention in 1978, but all such amendments relate either to administration or to the powers and duties of officers other than those charged with the administration of the Act, so consent is not required. The principal changes are these:

-- The section provides basically that home lands may be returned to the Board, and may be the subject of general leases by the Board, but such leases must contain (or be construed as containing) withdrawal provisions under which they can be returned to the Department of Hawaiian Home Lands if that Department needs them. Originally, the Department could not seek to have the lands returned under a withdrawal provision unless

the Secretary of the Interior approved. The need for Secretarial approval was eliminated in 1978.

-- Originally, the return of home lands to the Department was to occur "whenever" the Department sought them. As amended in 1978, a new but additional provision says that the withdrawal clause must stipulate at least one year's notice, but not more than five. Since both provisions remain, there is a an apparent internal inconsistency, but it should be resolved by construing the stipulated notice as being overcome in the event of DHHL's immediate need for the land in question. In any event, the amendment falls within either of the exemptions to the consent requirement.

-- Originally, a withdrawal clause was imputed to all leases, "whether or not stipulated therein," but an additional requirement starting in 1978 is that each lease "shall contain a withdrawal clause." Both provisions now stand in the same section, and are apparently of equal weight.

-- A new provision, and thus no inconsistency, is to the effect that home lands may be leased by the Board of Land and Natural Resources to public agencies or public utilities for a nominal rental, if the Department of Hawaiian Home Lands will benefit from their use. Another new (1978) provision states that any general lease by the Board of Land and Natural Resources is void in the absence of approval from the Department of Hawaiian Home Lands.

As stated above, the changes in section 212 relate to administration or to powers and duties of officers, and as such are exempt from the consent requirement.

Section 213 concerns revolving funds and special funds. Although the section has grown many-fold since Statehood, it does not appear that the three funds expressly named in section 4 of the Statehood Act have been impaired or reduced (and accordingly, that provision of the Statehood Act has not been violated); and the other changes (largely the addition of new funds) can reasonably be construed as both relating to administration, and increasing the benefits to lessees. Accordingly, U.S. consent to section 213 as it now stands is not required.

The Homes Commission Act at the time of Statehood provided for two revolving funds and two special funds: (1) the Hawaiian home-loan fund, (2) the Hawaiian home-operating fund, (3) the Hawaiian home-development fund, and (4) the Hawaiian home-administration account. The first three of these are the ones named in section 4.

An examination of the much-amended section 213 as it stands today shows that:

(1) The home-loan fund, now section 213(a)(1), has been entirely rewritten, but it does not differ materially in substance

from its predecessor (48 U.S.C., 1958 ed., sec. 707(b)), except that money from it can no longer be used to pay for the improvements of lessees who die leaving no qualified successor (pursuant to section 209). But those payments can now be made from the home-development fund, so there is no loss, and in fact a possible gain in benefits.

(2) The home-operating fund (now section 213(a)(7), formerly 48 U.S.C., 1958 ed., sec. 707(d)), although wholly rewritten does not contain modifications of substance.

(3) The home-development fund (now section 213(b)(1), formerly 48 U.S.C., 1958 ed., sec. 707 (c)), also has not been modified in matters of substance, except that some of its proceeds may now be used for the section 209 payments referred to above.

(4) The home-administration account (now section 231(b)(2), formerly 48 U.S.C., 1958 ed., sec. 707 (f)), concerning the use of proceeds from general leases by the Board of Land and Natural Resources, contains one material change, but the change does not decrease potential benefits. Formerly, the section stated that if the Legislature failed to appropriate funds for the administration of the Hawaiian Homes program, $200,000 would be automatically appropriated. That has now been eliminated, but the current requirement is that in the absence of an appropriation, funds in this account cannot be diverted to other purposes and will remain available for future use. The beneficiaries are thereby protected.

Otherwise, the section has been much expanded: instead of the two revolving funds referred to above, section 213 now provides for a total of seven; instead of the two special funds referred to above, the section now requires eight. It is unnecessary to examine each of these provisions, for none of the funds appears to run afoul of the consent provisions of the Statehood Act. Other funds are not impaired or reduced, and benefits to lessees, at least arguably, are increased.

Section 214, concerning loans to lessees, has been amended with great frequency between 1962 and 1981, but always to expand the objects for which loans can be made, to increase the possible recipients, or to grant additional authority to the Department of Hawaiian Home Lands. Notwithstanding the application of the severability clause to this section (see footnote 6), U.S. consent is not required for these changes. But, as discussed above in relation to section 209, the mere presence of a severability clause may argue for seeking consent, so as to eliminate doubt.

Section 215, which concerns conditions of loans made by the Hawaiian Homes Commission to lessees, has often been amended (1962, 1963, 1968, 1972, 1974, 1976, 1981 and 1982), but all of the amendments either expand benefits (by, for example, increasing the categories of loan recipients, or raising the loan ceilings), relate to administration (by substituting "Department" for the required con-

currence of three out of five Commission members), or are perfecting in nature. As such, they ought not to require U.S. consent. Thus, the inclusion in the 1978 amendments and some of the 1981 amendments of a severability clause (see footnote 6) probably could be safely ignored. But other 1981 amendments are subject to the explicit consent-of-the-U.S. clause (discussed above at section 209). The amendments are apparently nonsubstantive, and the consent requirement unnecessary, except that a cross-reference to the new section 210.5 pertaining to appraisal (which clearly does require U.S. consent) may have been regarded as sufficient to invoke the consent requirement. In any event, the inclusion in the State law of an express requirement for U.S. consent compels putting the request to the U.S. Congress.

Section 216 concerns insurance required by borrowers from the Department of Hawaiian Home Lands, and it has been amended in 1962, 1963, 1978, and 1981. In addition to perfecting changes, the section has been changed since Statehood to increase the objects for which the borrower must obtain insurance, and to increase the objects upon which the Department has a first lien. With respect to the former, in August 1959, a borrower was required to insure "all livestock and dwellings and other permanent improvements." He must today insure "any livestock, aquaculture stock, swine, poultry, fowl, machinery, equipment, dwellings, and permanent improvements . . . ." While "livestock" may (or arguably, may not) include "poultry," etc., there is no 1959 term that could be stretched to include machinery or equipment. And the borrower thus has a larger burden today than in 1959. The objects that are subject to the Department's lien have been expanded in a somewhat comparable way. Amendments to section 216 have sometimes been made subject to a severability clause (see footnote 6), but there is little room to question that they require U.S. consent. (They might be said to relate to "administration," and that is so, but they also relate directly to--and increase--the responsibilities of lessees.)

Section 217, pertaining to ejectment, was amended in 1963 in a nonsubstantive perfecting manner and does not require U.S. consent.

Section 218, now repealed, had made lessees of the Hawaiian Homes Commission ineligible for aid under the Farm Loan Act of Hawaii, enacted in 1919. Section 218 was repealed in 1967, and the repeal does not require U.S. consent inasmuch as the effect is to increase benefits to lessees.

Section 219 concerns the hiring by the Department of Hawaiian Home Lands of agricultural and aquaculture experts, so that lessees may obtain their advice. A 1981 amendment added aquaculture; a 1982 amendment eliminated a $6,000 ceiling on annual expenditures for compensation for experts. On various bases, it would appear that the amendments to this section do not require U.S. consent, yet the 1981 amendment was made subject to a severability clause. That being so, it would be unwise not to request U.S. consent to the amendments to the section, because without that consent there is doubt as to the status of the section and that amendment.

Section 219.1 is a new (1962) enactment by the State Legislature, authorizing the Department of Hawaiian Home Lands to render certain kinds of assistance to lessees. A 1981 amendment adds "aquaculture," and that amendment is subject to a severability clause. Because, as a matter of form, this section is not a part of nor an amendment to the Hawaiian Homes Commission Act, it probably for that reason does not require U.S. consent, but it might be wise to request U.S. consent so as to eliminate doubt as to its status.

Section 220, pertaining to development projects, to appropriations by the Legislature, and to bonds issued by the Legislature, has not been amended in a substantive manner since 1959.

Section 221 concerns water rights. It has three time been the subject of substantive amendment: in 1981 when references to aquaculture were inserted in two places; in 1978 when the Constitutional Convention added a subsection stating that water systems that are in the exclusive control of the Department of Hawaiian Home Lands must so remain; and in 1984, when the Department was authorized to negotiate agreements providing for the maintenance of water systems and for user fees. The 1981 amendments are subject to a severability clause, and as such, as explained earlier in this paper, the section as amended ought to be the subject of a request for U.S. consent, even though it would appear otherwise to be free of the consent requirement.

Section 222 is titled "Administration," and its content is consistent with that title--dealing with the adoption of rules and regulations, the payment of vouchers, reports to the Legislature, and sureties. Consent to the amendments (in 1972 and 1977) is thus not necessary, except that the 1977 amendment (concerning the surety provision) carried a severability clause. Consistent with the comments made elsewhere in this paper on amendments that are subject to a severability clause, this section as amended should also be the subject of a consent request, so as to eliminate any question as to the status of the section and its amendments.

Section 223 prior to Statehood provided in its entirety:

> The Congress of the United States reserves the right to alter, amend, or repeal the provisions of this [Hawaiian Homes Commission] Act.

This section does not appear in the Hawaii Revised Status, the codifiers having apparently concluded that the section was superseded by section 4 of the Statehood Act. That conclusion seems inescapable, and the repeal (by implication) of the section surely need not be submitted to the Congress.

Section 224 provides that the Secretary of the Interior is to designate an expert from his Department in sanitation, rehabilitation, and reclamation work, to reside in the State, to cooperate with the Department of Hawaiian Home Lands in carrying out its program, and to be paid by the Department of Hawaiian Home Lands. The section was not part of the Hawaiian Homes Commission Act when it was originaliy

enacted, but when added in 1935, it was designated a new section of the Act. A 1976 amendment (the only one of substance) eliminated an earlier provision that the Interior expert be paid no more than $6,000 per year. The amendment relates to administration, and as such need not be the subject of U.S. consent.

Section 225 concerns the investment of Homes Commission funds. It too was added after the Act was passed, but was then (1941) formally made a part of the basic statute. It was materially amended in 1978 by adding a new subsection that deals with the receipt, accounting for, and disposition of gifts. While the subject would seem to constitute "administration," and thus be exempt from the consent requirement, the Legislature in 1978 made the new gift subsection subject to a severability clause. Therefore, in the interest of eliminating uncertainty, that section should be the subject of a consent request. A 1983 amendment deletes a sentence pertaining to the accounting treatment to be accorded to interest arising from the investment of funds. But it relates to administration and thus does not require U.S. consent.

Section 226 permits the Department of Hawaiian Home Lands to participate in Federal programs. It is not a part of the Homes Commission Act (having been enacted by the State Legislature in 1978), and that being so, it should be exempt from the consent requirement. The Legislature has, however, made it subject to a severability clause, and for that reason it should be the subject of a consent request.

The need for action:

The preceding discussion is intended to demonstrate the certain amendments that have been enacted by the State Legislature to the Hawaiian Homes Commission Act are, under section 4 of the Statehood Act, subject to the requirement that the United States' consent by obtained. Consent has not been obtained, nor in fact sought before January 1985. If that consent is not obtained, the potential for mischief is considerable: uncertainty prevails, for it is not clear whether amendments, duly enacted by the Legislature of the State, are or are not effective. Litigation is thereby invited, and given the subject matter involved, as a practical matter it would not be surprising if it were instituted; and litigation is always expensive in terms of dollars, time, and state of mind. Moreover, given the application of a severability clause to many amendments that appear not to require it, as discussed above, sections of the Act are made vulnerable that ought not to be, because concerned parties could be expected to infer from the Legislature's action that U.S. concent should by obtained. In sum, the current situation is both uncertain and untidy, and it ought to be corrected.

Conclusions:

(1) The consent of the United States should be sought to all amendments to the Hawaiian Home Commission Act that are subject to such consent under the Statehood Act. Either a Member or Members of

the Congress or an officer of the Executive Branch could properly be invited to initiate the consent legislation. Obtaining the consent of the United States, or seeking to obtain that consent and failing to do so, would, either way, assist in clarifying a currently cloudy situation as to what the effective provisions of the Act actually are; and by inducing better order than now prevails, litigation is likely to be avoided, and a more secure administration is likely to be achieved.

The above analysis indicates that the following sections have been amended in a manner that warrants a request for the consent or the United States: sections 207, 208, 209, 210.5, 215. and 216.

(2) Amendments to several of the sections discussed in this paper do not appear to be subject to the consent requirement, except that the pertinent State law has made them subject to a severability clause, thereby implying that the Legislature considers that the amendments may be subject to the consent requirement. To eliminate uncertainty, those sections should also be submitted for consent. (They are sections 214, 219, 219.1, 221, 222, 225, and 226).

Henceforth, however, the severability clause should be applied with care, so as not to create doubt where none should exist.

(3) As a rule, if there is a genuine question as to whether an amendment requires U.S. consent or not under section 4 of the Statehood Act, it would be wise to err toward the more conservative judgment, thereby seeking consent and eliminating as much uncertainty as possible. On that basis, it would be well to request U.S. consent to the amended section 204(2).

(4) The Governor ought to designate one of his subordinates, perhaps the Director of the Department of Hawaiian Home Lands, as the officer responsible for transmitting amendments to Washington for attention. Good order requires that they be submitted reasonably soon after the Legislature has passed them and the Governor has approved them.

November 1985

Amendments to which the United States would consent if the Interior draft resolution were enacted:

The joint resolution proposed by the Department of the Interior would provide the consent of the United States to the amendments of the Hawaiian Homes Commission Act, 1920, as amended, that were adopted by the Constitutional Convention of Hawaii, 1978, and the election of November 7, 1978, and to the amendments of the Hawaiian Homes Commission Act, 1920, as amended, contained in the following acts of the Hawaii Legislature and approved by the Governor:

Session Laws of Hawaii, 1959, Act 13

Session Laws of Hawaii, 1961, Act 183

Session Laws of Hawaii, 1962, Acts 14, 18

Session Laws of Hawaii, 1963, Act 114, 207

Session Laws of Hawaii, 1965, Acts 4, 30, 223, 271

Session Laws of Hawaii, 1967, Act 146

Session Laws of Hawaii, 1968, Act 29

Session Laws of Hawaii, 1969, Acts 114, 259

Session Laws of Hawaii, 1972, Act 76

Session Laws of Hawaii, 1973, Acts 66, 130, 173, 220

Session Laws of Hawaii, 1974, Acts 170, 172, 173, 174, 175, 176

Session Laws of Hawaii, 1976, Acts 23, 24, 72, 120

Session Laws of Hawaii, 1977, Act 174

Session Laws of Hawaii, 1978, Act 229

Session Laws of Hawaii, 1979, Act 209

Session Laws of Hawaii, 1981, Acts 90, 158, 192, 203

Session Laws of Hawaii, 1982, Acts 272, 274, 275

Session Laws of Hawaii, 1983, Acts 125, 143, 147

Session Laws of Hawaii, 1984, Acts 27, 36, 37, 199, 260

Session Law of Hawaii, 1985, Acts 60, 69, 137, 159, 284, 295

Senator WEICKER. Deborah, thank you very much. Just briefly, before we go to Georgiana, I notice my good friend, Senator Matsunaga, has arrived. Spark, would you like to go ahead and say a word here?

Senator FORD. He is still on Hawaiian time.

Senator WEICKER. I wish we were on Hawaiian time.

Senator FORD. I do not know. We had to work late. Or early.

STATEMENT OF HON. SPARK M. MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Thank you, Mr. Chairman, Senator Ford.

Mr. Chairman, I am pleased to join my colleagues, Senator Inouye and Congressman Akaka, in urging this committee to take early favorable action on House Joint Resolution 17, passed by the House on April 8 of this year. H.J. Res. 17 would grant Congressional consent to 53 amendments to the Hawaiian Homes Commission Act which have been passed by the Hawaii State Legislature since 1959.

The measure has the support of the State of Hawaii, a number of major Hawaiian organizations, and the U.S. Department of the Interior. As has been testified to this morning, the Hawaiian Homes Commission Act of 1920 was first conceived and proposed by Hawaii's highly popular territorial delegate to Congress, Prince Jonha Kuhio Kalanianaole. As introduced by Prince Kuhio, the Act was intended to rehabilitate native Hawaiians by setting aside land for the exclusive use as home sites, farms, and pastures. Some 200,000 acres of land was reserved under the Act to be held in trust for native Hawaiians who were defined as those of 50 percent or more Hawaiian blood.

Thirty-nine years later, when the territory of Hawaii was admitted to the Union as a State, the U.S. Government transferred to the new State the authority to administer the Hawaiian Homes Commission Act. Section 4 of the Hawaiian Statehood Act required that the Hawaiian Homes Commission Act be adopted as part of the State Constitution as a compact with the United States.

While the State has broad authority to administer the Act and to amend it if necessary, the United States Government reserved the right to approve certain land transactions through the Secretary of the Interior and Congress reserved for itself the right to approve amendments to certain sections of the Hawaiian Homes Commission Act. In almost every legislative session during the past 20 years since statehood, the State legislature has adopted amendments to the Hawaiian Homes Commission Act designed to meet the needs of the native Hawaiians in our rapidly changing society.

Fifty-three of the amendments apparently do require Congressional consent. A joint Federal-State task force on the Hawaiian Homes Commission Act composed of representatives of the Secretary of the Interior and the Governor of the State of Hawaii found that none of the amendments adopted since statehood had been approved by Congress, and that approval apparently had not been sought.

The task force recommended a procedure to ensure timely Congressional consideration of future amendments and recommended

expedited consideration of the 53 which are currently awaiting Congressional approval. The Interior Department has prepared a comprehensive description of all of these amendments, and if the Department's witness has not already submitted the list for the committee's hearing record, then I request that it be included in the record at the end of our testimonies.

Mr. Chairman, none of these 53 amendments is in any way controversial except one. That is the State Legislature's Act 272, adopted in 1982, which provides for a limited exemption from the blood quantum provision for certain native Hawaiians. Under existing law, only Hawaiians who are of at least 50 percent blood, Hawaiian blood, may hold Hawaiian homes leases. In a significant number of cases, this means that when a lessee dies, his spouse and children are evicted from their home. Under H.J. Res. 17, the spouse or child of a lessee would be able to inherit a leased home provided that such spouse or child is of at least 25 percent Hawaiian blood.

The proposed change was debated in Hawaii for nearly ten years before it passed the State legislature in 1982. The controversy arises from the fact that during the 65 years since passage of the Hawaiian Homes Commission Act, only a fraction of the lands reserved for Hawaiians have actually been developed and awarded as leaseholds.

About 8,000 eligible Hawaiians are on the waiting list to obtain homesteads, and some have been on it for many years. In recent years, however, the Department of Hawaiian Home Lands has accelerated the granting of leases to eligible native Hawaiians. If this trend continues, and I believe it will, those currently on the waiting list will be placed on homesteads within a relatively short time.

The State of Hawaii and the Congressional Delegation are recommending this limited exemption to the blood quantum requirement for compassionate reasons. It would eliminate the severe hardship and distress suffered by the heirs of some lessees who are forced to vacate their homes or give up their livelihoods upon the death of the lessee. The existing requirement imposes a particular hardship on elderly spouses who in many cases cannot afford alternative housing. The author of the Hawaiian Homes Commission Act, Prince Kuhio, took note of the declining fortunes of native Hawaiians and was careful to include in his legislation provisions to protect their ownership of Hawaiian home lands. However, he surely did not foresee the day when there would be only about 11,000 full-blooded native Hawaiians and only about 35,000 who are half Hawaiian.

Today the great majority of native Hawaiians, and there are about 175,000 of them, are of one-quarter Hawaiian blood or even less. Prince Kuhio surely never intended for the heirs of those he was trying to protect to be thrown out of their family homes, and it is up to us to see that his concept is carried out. Unless we modernize his great legislation as proposed in H.J. Res. 17, many of its intended beneficiaries of native Hawaiian ancestry will be denied their just due. I urge your reporting favorably of H.J. Res. 17.

[The prepared statement of Senator Matsunaga follows:]

STATEMENT OF THE HONORABLE SPARK M. MATSUNAGA
IN SUPPORT OF H. J. RES. 17, APPROVING AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT BY THE HAWAII STATE LEGISLATURE
Before the Senate Committee on Energy and Natural Resources
Wednesday, August 13, 1986

Mr. Chairman, I am pleased to join my colleagues Senator Daniel K. Inouye and Congressman Daniel K. Akaka in urging this Committee to take early favorable action on House Joint Resolution 17.

Passed by the House on April 8, 1986, H. J. Res. 17 would grant congressional consent to 53 amendments to the Hawaiian Homes Commission Act which have been passed by the Hawaii State Legislature since 1959. The measure has the support of the State of Hawaii, a number of major Hawaiian organizations and the U.S. Department of the Interior.

The Hawaiian Homes Commission Act of 1920 was first conceived and proposed by Hawaii's highly popular territorial delegate to Congress Prince Jonah Kuhio Kalanianaole. As introduced by Prince Kuhio, the Act was intended to "rehabilitate" Native Hawaiians by setting aside land for the exclusive use of Hawaiians as homesites, farms, and pasture. Some 200,000 acres of land was reserved under the Act to be held in trust for Native Hawaiians, who were defined as those of 50% or more Hawaiian blood. Thirty-nine years later when the Territory of Hawaii was admitted to the Union as a State, the U.S. Government transferred to the new State the authority to administer the Hawaiian Homes Commission Act. Section 4 of the Hawaiian Statehood Act required that the Hawaiian Homes Commission Act be adopted as part of the State Constitution, as a "compact with the United States." While the State has broad authority to administer the Act and to amend it if necessary, the United States Government reserved the right to approve certain land transactions (through the Secretary of the Interior), and Congress reserved for itself the right to approve amendments to certain sections of the Hawaiian Homes Commission Act. In almost every legislative session during the past 26 years since statehood, the State Legislature has adopted amendments to the Hawaiian Homes Commission Act designed to meet the needs of Native Hawaiians in a rapidly changing society. Fifty-three of the amendments apparently do require congressional consent. A joint Federal-State Task Force on the Hawaiian Homes Commission Act, composed of representatives of the Secretary of the Interior and the Governor of the State of Hawaii, found that none of the amendments adopted since statehood had been approved by Congress and that approval apparently had not been sought. The Task Force recommended a procedure to ensure timely congressional consideration of future amendments and recommended expedited consideration of the 53 which are currently awaiting congressional approval. The Interior Department has prepared a comprehensive description of all of these amendments and, if the

Department's witness has not already submitted the list for the Committee's hearing record, then I request that it be included at the end of my testimony.

Mr. Chairman, none of these 53 amendments is in any way controversial, except one. That is the State Legislature's Act 272, adopted in 1982, which provides for a limited exemption from the blood quantum provision for certain Native Hawaiians. Under existing law, only Hawaiians who are of at least 50% Hawaiian blood may hold Hawaiian Homes leases. In a significant number of cases, this means that when a lessee dies, his spouse and children are evicted from their home. Under H. J. Res. 17, the spouse or child of a lessee would be able to inherit a leasehold provided that such spouse or child is of at least 25% Hawaiian blood. The proposed change was debated in Hawaii for nearly ten years before it passed the State Legislature in 1982.

The controversy arises from the fact that during the 65 years since passage of the Hawaiian Homes Commission Act, only a fraction of the lands reserved for Hawaiians have actually been developed and awarded as leaseholds. About 8,000 eligible Hawaiians are on the waiting list to obtain homesteads and some have been on it for many years. In recent years, however, the Department of Hawaiian Home Lands has accelerated the granting of leases to eligible Native Hawaiians. If this trend continues, and I believe that it will, those currently on the waiting list will be placed on homesteads within a relatively short time. The State of Hawaii and the Congressional Delegation are recommending this limited exemption to the blood quantum requirement for compassionate reasons. It would eliminate the severe hardship and distress suffered by the heirs of some lessees who are forced to vacate their homes or give up their livelihoods upon the death of the lessee. The existing requirement imposes a particular hardship on elderly spouses who, in many cases, cannot afford alternative housing.

The author of the Hawaiian Homes Commission Act, Prince Kuhio, took note of the declining fortunes of Native Hawaiians and was careful to include in his legislation provisions to protect their ownership of Hawaiian Home Lands. However, he surely did not foresee the day when there would be only about 11,000 full-blooded Native Hawaiians and only about 35,000 who are half Hawaiian. Today, the great majority of Native Hawaiians -- and there are about 175,000 of them -- are of one-quarter Hawaiian blood or even less. Prince Kuhio surely never intended for the heirs of those he was trying to protect to be thrown out of their family homes, and it is up to us to see that his concept is carried out. Unless we modernize his great legislation, as proposed in H. J. Res. 17, many of its intended beneficiaries of Native Hawaiian ancestry will be denied their just due.

Thank you very much.

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Senator WEICKER. Thank you very much, Senator Matsunaga, for your very eloquent statement.

Georgiana Padeken, who is the director, Department of Hawaiian Homes Land, it is a pleasure to have you with us.

STATEMENT OF GEORGIANA K. PADEKEN, CHAIRMAN, HAWAIIAN HOMES COMMISSION; ACCOMPANIED BY GEORGE KAEO AND JOHN ROWE, DEPARTMENT OF HAWAIIAN HOMES LAND

Ms. PADEKEN. Thank you very much, Mr. Chairman. Good morning. Good morning, Senator Ford.

My name is Georgiana Padeken, and I am chairman of the Hawaiian Homes Commission, which is the executive board of the Department of Hawaiian Home Lands for the State of Hawaii.

The purpose of House Joint Resolution 17 as amended is to provide for the consent of the United States to all amendments to the Hawaiian Homes Commission Act of 1920 as amended, made between August 21st, 1959, and June 30th, 1985, by the State of Hawaii, either in the constitution of the State of Hawaii or by enactment of State laws, except for Act 112, Session Laws of Hawaii, in 1981. The Admission Act requires that amendments to or repeal of provisions of the Hawaiian Homes Commission Act be made only with the consent of the United States except for amendments that relate to administration of the Hawaiian Homes Commission Act that increase benefits to lessees of Hawaiian Home Lands.

The Admission Act specifically provides that qualifications of lessees shall not be changed except with the consent of the United States. The initial purpose of House Joint Resolution 17 was to provide U.S. consent to those amendments to the Hawaiian Homes Commission Act made by Act 272 Session Laws of Hawaii in 1982 lowering the Hawaiian blood requirement for surviving spouse and children succeeding to a lease of Hawaiian home lands and making two other changes to Section 209 of the Hawaiian Homes Commission Act.

Upon the recommendation of the United States Department of the Interior House Joint Resolution 17 was amended and brought in to include all amendments to the Hawaiian Homes Commission Act made by the State of Hawaii through June 30th, 1985, with the exception of one measure. The testimony of the Department of Hawaiian Home Lands provides background data, information about the Department's programs and activities, the discussion of certain issues that have been raised about the subject matter of the resolution and justification for approval of the resolution.

Our testimony is offered in three parts. Part 1 provides the background information about the Hawaiian Homes Commission Act, about the Department of Hawaiian Home Lands. Information about the homesteading program and other activities are also provided in this part. This part also contains a discussion of our three major priority goals, goals that have been adopted by the Hawaiian Homes Commission and the progress that has been made in improving internal management capabilities, restoring trust assets, and accelerating the award of homestead lands to native Hawaiian beneficiaries. Part 2 covers amendments to the Hawaiian Homes

Commission Act made by Act 272 and provides background information leading to the passage of that law.

Finally, Part 3 of the Department's testimony discusses the amendments made to the Hawaiian Homes Commission Act from the date of Hawaii's statehood through June 30th, 1985, by identifying the kinds of laws that have been enacted by the State of Hawaii. The categories identified include laws which explicitly require United States consent, those enacted with a severability clause, and those which do not require consent because they are of a technical nonsubstantive nature and deal with administrative matters or increase benefits to lessees.

The Department supports the intent to obtain consent to all the amendments except one in order that any uncertainty as to the legality may be removed. For the reasons stated in the testimony, the Department of Hawaiian Home Lands respectfully recommends your favorable consideration of House Joint Resolution 17, and we appreciate very much the opportunity to present our comments to this committee. Thank you.

[The prepared statement of Ms. Padeken follows:]

TESTIMONY

ON HOUSE JOINT RESOLUTION 17

BEFORE THE SENATE COMMITTEE

ON ENERGY AND NATURAL RESOURCES

The Honorable James A. McClure
Chairman

BY

Ms. Georgiana K. Padeken, Chairman
Hawaiian Homes Commission
State of Hawaii

Washington, D.C.

August 13, 1986

Mr. Chairman, and members of the Senate Committee on Energy and Natural Resources:

We appreciate very much your kind consideration in providing us this opportunity to testify in support of House Joint Resolution 17.

The initial purpose of House Joint Resolution 17 was to provide congressional consent to amendments to the Hawaiian Homes Commission Act, 1920, as amended, (hereinafter "HHCA"), made by Act 272, Session Laws of Hawaii 1982, dealing with the qualification requirements for a surviving spouse or children succeeding to a lease of Hawaiian home lands. Upon recommendation of the Department of the Interior, the scope of H. J. Res. 17 was broadened to include all amendments to the HHCA made by the State government, except one. In its present amended form, H. J. Res. 17 would provide for U.S. consent to all amendments to the HHCA enacted between August 21, 1959, the date of Hawaii's admission to the Union, and June 30, 1985, except for Act 112, Session Laws of Hawaii 1981, a measure which we will ask the State Legislature to repeal.

Part I. The HHCA and the Department of Hawaiian Home Lands

Background of the HHCA

The HHCA was passed by the U.S. Congress and signed into law by President Woodrow Wilson on July 9, 1921. It set aside certain lands of the Territory of Hawaii as Hawaiian home lands, and established a homesteading program to provide for the rehabilitation of native Hawaiians, that is, persons of at least 50% Hawaiian blood.

The HHCA was enacted to address concerns over the declining number of full-blooded Hawaiians in the Territory and their economic plight. Population data showed the number of full-blooded Hawaiians had decreased from an estimated 142,650 in 1826 to 22,600 in 1919; and many Hawaiians were jobless, homeless, and driven to live in or near urban areas to seek cheap shelter.

When Hawaii became a State in 1959, the Admission Act (Act of March 18, 1959, Pub L 86-3, 73 Stat 4), inter alia:

(1) Transferred title to all Hawaiian home lands to the State. (Section 5)

(2) Required that, as a compact with the United States relating to the management and disposition of Hawaiian home lands, the HHCA be adopted as a provision of the Hawaii State Constitution. (Section 4)

(3) Required that amendments to or repeal of provisions of the HHCA be made only with the consent of the United States, except for amendments to provisions that relate to administration of the HHCA or that increase benefits to lessees of the HHCA. The Admission Act specifically provided that qualifications of lessees shall not be changed except with the consent of the United States. (Section 4)

The Department of Hawaiian Home Lands (DHHL)

The HHCA is administered by the Department of Hawaiian Home Lands, one of 17 executive agencies of the State of Hawaii. The Department is headed by an executive board known as the Hawaiian Homes Commission, whose eight members are appointed by

the Governor with the advice and consent of the State Senate. The Chairman of the Commission serves as the full-time administrator of the DHHL. The DHHL has 115 employees statewide.

Pursuant to provisions of the HHCA, the DHHL provides benefits to native Hawaiians in the form of 99-year homestead leases at an annual rental of $1. The DHHL also provides lessees with loans and loan guarantees for home construction, home repair or replacement, farming, and ranching. In addition, DHHL provides technical assistance to farmers and ranchers, maintains roads and facilities in homestead districts, and operates or provides for water systems. The homesteading program aims to increase the economic self-sufficiency of native Hawaiians through the provision of land.

Hawaiian home lands are located on the islands of Oahu, Kauai, Molokai, Maui, and Hawaii, with a total estimated acreage of 187,597. Of that total, 29,539 acres had been awarded as homestead lots for residential, agricultural, or pastoral (ranching) uses as of June 30, 1985, an increase of 2,100 acres over the previous year. An estimated 3,000 additional acres were awarded for homestead use in the fiscal year ending June 30, 1986.

Table 1 of Exhibit "A" provides a tabulation of the distribution of Hawaiian home lands by islands and by their present use. Table 2 of Exhibit "A" shows the distribution of homestead leases by islands and by types of leases.

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The DHHL also manages real property not used for homesteading purposes by awarding general leases, licenses, and issuing permits for commercial, industrial, and other uses. Revenues from income-producing land are used to meet the costs of operating the Department because DHHL's operating costs are financed in total by its own earnings and special funds. Capital improvement funds and loan funds have been provided by legislative appropriations financed by general obligation bonds. For the current fiscal year, the State Legislature has appropriated a total of $9.49 million. A sum of $5.79 million is for development of homestead lands, $1.95 million is for improvements to the Molokai Water System, and $1.75 million for the development of income-producing land.

Following a full assessment of problems and issues in various program areas, including findings and recommendations of the 1983 report submitted by the Federal-State Task Force on the Hawaiian Homes Commission Act, the Hawaiian Homes Commission in 1983 adopted three major priority goals to be accomplished over a four-year period. Briefly, the priority goals are:

(1) To improve internal management capabilities to enable the Department to plan, develop, and implement programs for native Hawaiians effectively.

(2) To restore trust assets by taking corrective actions to resolve issues relating to the improper use of Hawaiian home lands by public agencies (lands which had been set aside or withdrawn by past executive action).

(3) To accelerate the distribution of Hawaiian home lands to more than 8,000 applicants on waiting lists for homestead lots.

During the fiscal year ending June 30, 1985, the DHHL awarded more than 1,000 homestead lots under the acceleration program. In the fiscal year that ended June 30, 1986, DHHL awarded 1,505 homestead lots and plans to award another 1,500 lots in the current fiscal year. By June 30, 1987, it is expected that the number of homestead leases will more than double the 3,332 leases awarded up through June 30, 1984. While some of the new awards are for fully developed lots, most are or will be lots with minimal improvements because DHHL does not have sufficient funds to provide full infrastructure development.

In addition to the acceleration program there has been significant progress in attaining other priority goals. Internal management improvements have included reorganization, increasing staff to meet a rising workload, computerizing work processes, and fiscal recordkeeping. Priority attention given to investment of available cash has resulted in record earnings totalling more than $2.4 million for the past two years. Feasibility studies are being undertaken to identify economic development opportunities for our income-producing lands with the aim of maximizing returns.

In February 1986 the Legislative Auditor issued an audit report for the fiscal year ending June 30, 1985. The CPA firm that audited DHHL's financial statements, accounting practices,

and internal control system issued an unqualified opinion; it found DHHL financial statements in order and present fairly the financial position and operational results of the funds.

Another priority goal deals with restoring trust assets by returning to the DHHL control and management of Hawaiian home lands that had been set aside by previous Governors for use by other public agencies. Acting on DHHL's research and recommendations, Governor George R. Ariyoshi in 1984 returned 27,825 acres of such lands to DHHL by nullifying executive actions of his predecessors.

Part II. Act 272, SLH 1982, the "Successorship Bill"

Background of Act 272, SLH 1982

When first introduced, H. J. Res. 17 provided consent to only one measure enacted by the State to amend the HHCA. That measure, Act 272, SLH 1982 (hereinafter "Act 272"), provides for lowering the blood quantum requirement for a surviving spouse or children of a deceased lessee from at least 50% Hawaiian to at least 25% Hawaiian. Act 272 also amends the HHCA as to when a lessee must designate a successor, and the manner in which the Hawaiian Homes Commission may select a successor to a lease if the lessee dies without designating a successor.

While Act 272 was enacted in 1982, it should be noted that other measures dealing with blood quantum requirements had been considered by the State Legislature in earlier sessions beginning in 1976.

In 1977 the DHHL conducted a survey of its lessees and applicants. A total of 1,048 households responded to the questionnaire, for a response rate of 16%. There was an average of six in each household. Among the questions were several relating to lowering the blood quantum requirement. Some of the results are summarized below.

(1) Should amendments be made to the HHCA to permit a child of a lessee to inherit the parent's lease if the child is less that 50% Hawaiian? 80% answered yes.

(2) Should the lessee be permitted to name <u>any</u> relative to inherit the homestead lease, even if the relative is less than 50% Hawaiian? 57% answered yes.

(3) Should a lessee be permitted to name anyone to inherit the homestead lease regardless of relationship? 70% answered no.

Act 272 was considered by the Eleventh State Legislature as House Bill No. 725, which was introduced as an Administration measure in the 1981 Regular Session. The first hearing on the bill was held in 1981 and final reading was held during the 1982 Regular Session.

<u>Purpose and Effect of Act 272</u>

The purpose of Act 272 is to amend Section 209 of the HHCA: (1) by reducing the Hawaiian blood requirement a spouse or offspring of a homestead lessee would need to qualify as a successor to the lease; (2) by eliminating the requirement that a lessee designate a successor to a lease at the time of a

homestead award; and (3) by limiting whom the Commission may select as the successor to a lease if the lessee dies without designating a successor.

Section 209 of the HHCA now requires that successors to the unexpired term of a homestead lease be native Hawaiians, that is, persons of at least 50% Hawaiian blood, and related to the deceased lessee. In many instances, however, a homesteader may be married to a non-native Hawaiian so that neither the spouse nor offspring meet the 50% Hawaiian blood requirement to qualify as a successor. The death of the lessee would result in the displacement of the surviving spouse and children.

The inability of lessees to leave their homesteads to a surviving spouse or children with less than 50% Hawaiian blood threatens family stability and security. It also tends to frustrate the intent of the homesteading program. Native Hawaiians and their immediate families should be provided the assurance and protection under the HHCA that the death of the lessee would not disrupt the family unduly. From a pragmatic standpoint, continuity in owning the leasehold interest would provide an incentive to the homesteading family to improve and maintain their home and property conscientiously.

Act 272 reduces the blood quantum requirement to one-quarter (25%) Hawaiian. The reduction in the Hawaiian blood requirement would apply only to the surviving spouse and children; all other successors will still be required to meet the 50% blood requirement.

The second amendment made to Section 209 by Act 272 would eliminate the present requirement that a lessee designate a successor at the time the homestead lease award is made and if no designation is made by the lessee the Commission is then required to designate a successor. The amendment provides flexibility with respect to when a successor to a lease may be named, gives the lessee more time to make this important decision, and eliminates the requirement that the Commission designate a successor if none has been named by the lessee.

The third amendment made by Act 272 addresses the provision that if a lessee dies without having designated a successor, the Hawaiian Homes Commission is authorized to select a successor from among the lessee's spouse, children, or other relatives named in Section 209 who are qualified to succeed to the lease. This provision places an onerous task on the Department to contact all qualified relatives and burdens the Commission with making a selection which at times may be most difficult. The amendment allows the Commission to continue to select a successor to the lease in the event the lessee fails to designate a successor, but limits selection first, to a qualified spouse, or if there is none surviving, to qualified children.

Based on the favorable testimony provided by the DHHL and by native Hawaiian groups and individuals, the State Legislature passed H. B. No. 725. It passed the State Senate by a margin of 22-1, with two members excused. On final reading in the House the vote was unanimous, with 51 ayes. The bill was approved by Governor Ariyoshi on June 18, 1982.

Implications of Hawaiian Blood Quantum Reduction

Under the present provision of Section 209 of the HHCA, if the spouse or children of a deceased lessee do not meet the 50% Hawaiian blood requirement, they must leave the homestead.

Lessees and their families have taken a number of actions to ameliorate and cope with this situation. Some examples are discussed below.

A prevalent practice is to name a qualified relative to succeed to the lease, with the intent that the relative would allow the surviving spouse and children to reside on the homestead.

A variation of the above arrangement is to have the qualified relative assume the lease and pay to the surviving spouse and children the appraised value of the property, or a price the parties may agree to.

Another practice is for the lessee to voluntarily surrender the lease in order that the family may realize the appraised value of the property and use the net proceeds to find housing elsewhere.

Actions to cope with the situation have not always worked out, and in many instances, have created more problems. Although having a relative take over a homestead may begin with good intentions, the stress and strain of having two families on the homestead and the financial burden of assuming the outstanding loan imposed on the relative have not worked to the mutual benefit of the families involved. This arrangement, with its built-in conflicting interests, often results not only in the displacement of the surviving spouse and children but

also in alienation among family members. Using the proceeds of sale to find other housing is not a satisfactory solution because of the high cost of housing in Hawaii, where the average cost of a single-family residence is $150,000.

The Department believes that future incidences of non-qualifying spouse and offspring being displaced will be substantial if the present 50% Hawaiian blood requirement is retained. This conclusion is based on a review of lease and application records.

Of 4,276 lessee records reviewed in 1985, 529 (12.4%) named a relative other than a spouse or children to succeed to the lease, and 611 (14.3%) designated a spouse or children to receive the appraised value of the leasehold improvements upon the lessee's death. The data indicate that at least 611 families would be displaced when the lessee dies. The number may be more, as many as 1,140, because those who designated some other relative to succeed to the lease may have done so with the intention that the relative would permit the lessee's immediate family to continue to remain on the homestead.

In 1985 7,719 applicants were mailed questionnaires to determine their current interest in the homesteading program and to obtain other data. Of 4,381 applicants responding, 3,655 (83%) were married. Among those married, 1,443 (33%) were married to non-native Hawaiians, and within this group, 940, or 21% could have offspring who do not meet the 50% blood requirement but would meet the 25% blood requirement. The Department believes that as applicants are placed on the land,

successorship under the 50% blood requirement would pose a problem for a significant number of families because of the large number of non-qualifying spouses.

A concern that has been raised is whether lowering of the blood requirement for surviving spouse and children would adversely affect applicants on the waiting lists, that is, whether there would be sufficient land to accommodate all native Hawaiians interested in Hawaiian home lands. The DHHL does not believe there would be an adverse impact.

Of total available lands, only about 17% is in homestead use. The Department believes that all interested native Hawaiians can be accommodated by lands available for homesteading, particularly for those interested in homesteading on the islands of Hawaii, Maui, Molokai, and Kauai.

As of June 30, 1986, 12,041 names were on waiting lists, of which 6,515 (54%) were added within the latter 24 months. Among the remaining, 1,020 (about 8.5% of the total), applied between the 1950's through 1977 and are interested in a homestead lot. It has been most difficult to place those persons because they have limited their choice to a specific homestead area, a specific island (Oahu), or a specific type of lease. Many have been offered alternative sites, but have declined the lots offered by DHHL.

Depending on location and type of lease offered, new awardees have included persons who applied in 1985. On Oahu DHHL has awarded agricultural lots to applicants who applied

in 1985. On all other islands DHHL has awarded residential and agricultural lots to applicants who applied in the 1980's.

In summary, the Department finds that reduction of the blood quantum requirement from 50% to 25% Hawaiian, as applied to the surviving spouse and children of a deceased lessee, would be beneficial in providing for family stability, security, and continued use of the homestead property and would not adversely affect those on the waiting lists because there is sufficient land to accomodate them. Based on a review of current lessee files and a recent sampling of applicants, as many as 1,140 lessee families and at least 940 applicant families would benefit from a reduction of the Hawaiian blood requirement.

The DHHL is aware of the dissenting views filed with the Report of the Committee on Interior and Insular Affairs on H. J. Res. 17. We appreciate the interest in and concerns for native Hawaiians reflected by those views. The Department's comments on the dissenting views are offered in response to the concerns noted in the minority report.

1. The report, in part, states the following premise; "H. J. Res. 17 would change the successorship rules to allow the leases to pass to those Natives who would not themselves qualify for a lease."

   COMMENT: H. J. Res. 17 would change the successorship law only with respect to allowing a present lessee's surviving spouse or children, who possess at least 25% Hawaiian

blood, to succeed to the unexpired term of the lease upon the lessee's death. The application of the change in the successorship law is severely restricted.

2. The report cites the following point: "First, qualified Native Hawaiians were not adequately represented at the hearing."

   COMMENT: H. J. Res. 17, and in particular, the "successorship bill" is supported by the Hawaiian Homes Commission, the executive body responsible for administering the Hawaiian Homes Commission Act, and by the Office of Hawaiian Affairs, a State of Hawaii agency headed by a Board of Trustees elected by native Hawaiians and Hawaiians. Both organizations testified in support of H. J. Res. 17.

   The "successorship bill" is supported by Alu Like, Inc., a non-profit statewide organization serving native Hawaiians, the Waianae Valley Homestead Community Association and others.

   The DHHL is not aware of any large number of individuals or native Hawaiian organizations who are in opposition.

   The DHHL believes that the margin by which the bill passed the State Legislature is indicative of the support for amending the successorship provision. House Bill No. 725 was approved unanimously in the State House of Representatives and passed the State Senate with only one negative vote cast.

3. The report states: "A poll was conducted by the Hawaiian Homes Commission and its results were used to justify the change in the HHCA. Unfortunately, of the 1000 surveys sent out (out of a possible 9000), only 16% responded, and only 57% of those responding supported the amendment. This is not a valid poll or survey for the purpose of changing existing law which would adversely affect a substantial portion of those whom the law was intended to help."

COMMENT:

a. The results of the 1977 poll were cited by DHHL as background, and not as the justification for passage of Act 272, SLH 1982.

b. DHHL would like to clarify the data about the 1977 poll.

(1) The minority report states that 1,000 surveys were sent out. The DHHL testimony stated that a total of 1,048 households responded to the questionnaire.

(2) The minority report states that of 1,000 surveys sent out (out of a possible 9,000) only 16% responded. The DHHL testimony stated that there was a response rate of 16%, meaning that about 6,500 questionnaires were sent out.

(3) The minority report states that only 57% of those responding supported the amendment. In fact, the DHHL testimony reported that 80% were in favor of amending the HHCA to permit a child of a lessee to inherit the parent's lease if the child is less than 50% Hawaiian.

As stated in the DHHL testimony, 57% answered "yes" to the question: "Should the lessee be permitted to name any relative to inherit the homestead lease, even if the relative is less than 50% Hawaiian?" Although this question may lack specificity, the response is significant in that: (1) a majority of respondents would favor allowing any relative who is not a native Hawaiian to succeed to the lease; and, (2) when the results are read in conjunction with the response to the question about allowing a surviving child who is not a native Hawaiian to succeed, a far larger number of responding households (838, or 80% of 1,048) would prefer limiting who could succeed. (Note: Section 209 of the HHCA specifies the qualifying relatives who may be designated as a successor, and it can be assumed that some of the respondents interpreted this question in the light of the law.)

Part III. Amendments to the HHCA: 1959-1985

Section 4 of the Admission Act (Act of March 18, 1959, Pub L 86-3, 73 Stat 4) states:

> "§4. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and

> other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the 'available lands', as defined by said Act, shall be used only in carrying out the provisions of said Act."

In its August 1983 report, the Federal-State Task Force on the Hawaiian Homes Commission Act recommended that "As soon as reasonably possible, the State of Hawaii should seek to obtain the consent of the United States to all amendments to the HHCA that are required to have consent under the Hawaii Admission Act".

Acting on the Task Force recommendation, the Department of the Interior recommended that H. J. Res. 17 be amended to provide consent for all amendments to the HHCA, except one, enacted since August 21, 1959. Although some of the laws were merely of a "perfecting" nature and did not affect the substance of the law, they are included in the present coverage of H.J. Res. 17, as are many which clearly were of an administrative nature or which increase benefits to lessees of Hawaiian home lands.

One measure, Act 112, SLH 1981, provides for an amendment to Section 209 of the HHCA and the establishment of a formula for valuation of leasehold improvements, including a "buy-back" provision. This measure was enacted subject to obtaining U. S. consent, but is not included in the laws covered by H. J. Res. 17 because the DHHL plans to ask the State legislature to repeal it.

The intent and purpose of H. J. Res. 17 in its amended form is to give consent to all Constitutional amendments and laws amending the HHCA enacted by the State of Hawaii since 1959 through June 30, 1985. Our review of the laws listed in the House Committee Report shows three inadvertent errors. The Session Laws of Hawaii enacted in 1972 are Acts 76 and 173. The Session Laws of Hawaii enacted in 1973 are Acts 66, 130, and 220. The Session Laws of Hawaii enacted in 1978 should include Act 204, and should read: Acts 204 and 229. In all, 55 laws were enacted to amend the HHCA since Hawaii Statehood, and all, except Act 112, SLH 1981, are recommended for consent.

Three of the 54 laws covered by H. J. Res. 17 contain a provision that they do not take effect until such time as consent is obtained from the U. S. In addition to Act 272, SLH 1982, they are:

> Act 23, SLH 1976, amended Section 207 of the HHCA, subject to the consent of the United States. Two amendments were made. In consideration of costs to the Department, a provision was added to the end of subsection (a): "provided further, that the department may designate the location of the homesite on residence lots less than 10,000 square feet." Also,

in the case of an existing farm lot in Kalanianaole Settlement on Molokai, the department is to select the location of the residence lot, rather than the lessee.

Act 204, SLH 1978, provided for a new Section 226, subject to consent of the U. S. The new section reads: "§226. Qualification of federal programs. The department shall be qualified to participate in any federal program that renders assistance in program areas that the department is mandated by the Act to implement."

In a number of instances State laws amended the HHCA subject to a severability clause. These amendments became effective upon enactment but cease to be effective only when it is held by the courts that U. S. consent is needed.

In many other instances State laws amending the HHCA were of a technical, non-substantive nature, dealt with matters relating to administration, or increased benefits to lessees. Laws in this latter category clearly do not require consent.

The DHHL supports the intent to obtain consent to all of the State laws that have amended the HHCA as provided by H. J. Res. 17, even if many of the acts do not require consent. The DHHL concurs with the Department of the Interior that consent will remove any uncertainties as to their legality.

The DHHL notes that each of the State measures was enacted only after the required legislative process was followed. That process requires public hearings on each bill, and at least three readings in each house. The DHHL concurs in the finding of the Department of Interior that the subjects of the

amendments are "all peculiarly matters of State concern," and further, that once the issues are resolved by the State of Hawaii, Congress be asked to consent to the decision reached at the State level.

A recent development provides another reason for urging your consent to the amendments to the HHCA. Act 284, SLH 1985, amended Section 208 of the HHCA to allow a lessee to mortgage the lessee's leasehold interest, provided that the loan is insured or guaranteed by a Federal agency authorized to insure or guarantee such loans. Act 284 also amended Section 213 of the HHCA to allow DHHL to establish an account in the Hawaiian home trust fund as a reserve for loans insured or guaranteed by a Federal agency. The law was enacted with a severability clause, even though it was viewed as increasing benefits for lessees by making private sources of financing available to lessees. The proposed rules for the insured loan program published by the U. S. Department of Housing and Urban Development indicate that implementation of the program is contingent upon consent being given to H. J. Res. 17, since Act 284, SLH 1985, is one of the State laws for which approval is sought.

The DHHL strongly recommends approval of H. J. Res. 17 in its present form. We also suggest that a correct listing of State laws be inserted in your committee report to eliminate any questions as to the coverage of H. J. Res. 17.

EXHIBIT "A"

Table 1. Distribution and Use of Hawaiian Home Lands
(In acres; data as of June 30, 1985)

	I S L A N D S					Total
	Hawaii	Kauai	Maui	Molokai	Oahu	Acreage
USES						
Homestead	19,635	779	41	8,598	486	29,539
Community Pasture	259	---		---		259
General Lease	50,672	302	21,679	759	1,866	75,278
License	90	6	6	588	103	793
Other	37,325	17,482	7,269	15,456	4,196	81,728
TOTALS	107,981	18,569	28,995	25,401	6,651	187,597

Table 2. Homestead Leases, by Islands and by Types
(Data as of June 30, 1986)

TYPE OF LEASES	Hawaii	Kauai	Maui	Molokai	Oahu	Total
Residential	1,027	406	492	302	2,372	4,599
Agricultural	467	45	68	421	66	1,067
Pastoral	67	2	___	27	_____	96
TOTAL	1,561	453	560	750	2,438	5,762

Senator WEICKER. Georgiana, thank you very much. We will get to questions in a minute. But first, I would like to hear from Mr. Gard Kealoha, trustee of the Office of Hawaiian Affairs.

STATEMENT OF GARD KEALOHA, TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS

Mr. KEALOHA. Aloha. I would like, with your permission, Senator, to also add a very brief extract from a statement from Winona Rubin, the president and chief executive officer of Alu Like, Inc.

Senator WEICKER. It certainly will be included in the record.

Mr. KEALOHA. These two extracts shall be brief, of course, in acceding to your time constraints here this morning. I assure you that they say that brevity is the soul of wit, and while these two statements may not fit with, they do fulfill complete dimensions of the soul.

The amendments proposed will strengthen the program by allowing native Hawaiian families to remain with the land which was designated for their use. The Office of Hawaiian Affairs is therefore in strong support of immediate Congressional consent to the amendments enacted by the legislature of Hawaii to the Hawaiian Homes Commission Act, and strongly supports the adoption of House Joint Resolution 17.

The Alu Like, Inc., has followed this amendment since it was initially introduced in the Hawaii State Legislature in 1976. During each successive year until 1982 there were public hearings by both Houses of the State Legislature and community meetings for homesteaders and eligible native Hawaiians as well as others in the Hawaii community.

The fine language of Act 272 is the result of several years of refinement consistent with the expressed wishes of the community. The Hawaiian community's support of this measure is consistently clear. The time lag of four years between enactment of this important legislation by the State of Hawaii and this hearing today is unfortunate, and further delay and suffering by beneficiaries should not be allowed to continue. The Alu Like board of directors is in support of House Joint Resolution 17, and urges its immediate passage.

Thank you.

[The prepared statement of Mr. Kealoha follows:]

OFFICE OF HAWAIIAN AFFAIRS

TESTIMONY BEFORE THE U. S. SENATE SELECT COMMITTEE
ON ENERGY AND NATURAL RESOURCES

HOUSE JOINT RESOLUTION 17
TO CONSENT TO AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII
TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

AUGUST 13, 1986

Presented by
Gard Kealoha, Trustee
Office of Hawaiian Affairs
567 South King Street, Suite 100
Honolulu, Hawaii 96813

Wednesday, August 13, 1986
9:30 A.M.
Dirksen Senate Office Building
Room SD-366
Washington, D.C.

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
567 SOUTH KING STREET, SUITE 100
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TESTIMONY BEFORE THE U.S. SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

HOUSE JOINT RESOLUTION 17
TO CONSENT TO AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII
TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

AUGUST 13, 1986

Mr. Chairman and members of the Committee, aloha pumehana kakou. My name is Gard Kealoha, member of the Board of Trustees, Office of Hawaiian Affairs (OHA). I would like to thank Senator James McClure, Chairman of the Senate Committee on Energy and Natural Resources, for scheduling this important hearing on House Joint Resolution 17, which provides for Congressional consent to amendments to the Hawaiian Homes Commission Act of 1920. The Office of Hawaiian Affairs strongly supports Congressional consent to these amendments.

Before continuing, however, I would like to share with you a little background on the Office of Hawaiian Affairs as a means of providing the members of the Committee with some understanding of the role and interest of OHA in this matter.

THE OFFICE OF HAWAIIAN AFFAIRS

The Office of Hawaiian Affairs is governed by an elected nine-member Board of Trustees. The trustees must be of Native Hawaiian descent and are elected by eligible voters who must also be of Native Hawaiian ancestry. As a result, the OHA trustees are directly accountable to their beneficiaries, the Native Hawaiian people.

OHA was created in 1978 by an amendment to the Hawaii State Constitution. The basis for its establishment, however, dates back to our State Admission Act of 1959. The Act created a public land trust, the proceeds of which were to be used for five purposes. One of the purposes was the betterment of conditions for Native Hawaiians.

In 1979, the legislature passed Act 196 which established the basic structure of OHA. This act, which was subsequently codified as Chapter 10, Hawaii Revised Statutes, set out the basic purposes, powers, duties and responsibilities of OHA. Chapter 10 established OHA as the "principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians." Chapter 10 also mandates OHA to serve as a receptacle for reparations and to act as a clearinghouse for federal or state assistance involving Native Hawaiian programs and projects. OHA is also responsible for advising, informing and coordinating federal, state and county activities relating to Native Hawaiian programs. It is with this role in mind that OHA submits this testimony today.

PROPOSED AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT AND THEIR RAMIFICATIONS

Although we realize that the House Committee on Interior and Insular Affairs amended House Joint Resolution 17 to consent to all amendments made to the Hawaiian Homes Commission Act, we will restrict our testimony to amendments to the Hawaiian Homes Commission Act made in Act 272, SLH 1982. We will restrict our comments because the issue of lowering the blood quantum for successorship to Hawaiian Home Lands' leases is an important one on which the Board of Trustees of OHA has taken an official position.

The proposed amendments to the Hawaiian Homes Commission Act, made in Act 272, SLH 1982, accomplishes:

1. reduction of Native Hawaiian blood quantum requirement of a spouse or offspring of a homestead lessee for successorship purposes from 50% to 25%;
2. elimination of the requirement for a lessee to designate a successor at the time of the homestead award; and
3. limitation of qualified successors whom the Commission may name in case the lessee fails to designate a successor.

The Hawaiian Homes Commission Act currently requires designated successors to Hawaiian Home Lands leases to be of at least 50% Native Hawaiian ancestry. Often, however, homesteaders of 50% ancestry have spouses who are non-Native Hawaiians and neither the homesteader's spouse nor offsprings have the minimum blood requirement to qualify as successors. These situations threaten family security and frustrate the intent of the Hawaiian Homes Commission Act, which is to provide land for use by Native Hawaiians and their families. In addition, the lack of continuity in the land provides few incentives for the homesteading family to improve and maintain their home and property.

The need to amend the Hawaiian Homes Commission Act in order to lower the blood quantum for successorship to 25% Hawaiian blood has been recognized by both the Federal-State Task Force on the Hawaiian Homes Commission Act, and the Native Hawaiians Study Commission, which was mandated by Public Law 96-565, Title III in December, 1980. The Federal-State Task Force on the Hawaiian Homes Commission Act was established in 1980 by the United States Secretary of the Interior and the Governor of the State of Hawaii, and funded by OHA.

In its final report to the Secretary of the Interior and the Governor of the State of Hawaii, the Task Force Recommendation 6 reads: "As soon as possible, the State of Hawaii and the United States should seek congressional approval for the amendment to the Hawaiian Homes Commission Act passed by the Hawaii State Legislature in 1982 which lowers the blood quantum for successorship."

Volume II of the Native Hawaiians Study Commission noted the "insecurity and distress" the 50% blood quantum requirement has caused. "Needless to say such a situation has created problems. The homes are essentially being treated as rental units. Maintenance, repairs or improvements are rarely performed. When an individual sees his home which will most likely not be passed on to his descendants, he loses interest and concerns himself only with day-to-day matters. Such an attitude carries over to repayment of loans."

The 50% blood quantum requirement has caused many horror stories related to the eviction of families from Hawaiian Home Lands homestead areas. One such story recently related to me is one in which the father of a strong Christian family with eight children was granted a homestead award after many years of waiting. Unfortunately his wife died before they were able to build a house on their land. Seven years after receiving the lease, the father of the family died unexpectedly leaving his eight children orphans. Although the oldest child was 26 years old, and together as a family unit the children could have managed financially to remain in the house, they were evicted because they did not meet the minimum blood requirement. Subsequently the family was split up and two of the eight children were lost to drugs and alcohol.

The second amendment in Act 272 allows a lessee some time to designate a successor instead of requiring it immediately at the time of the homestead

award. This amendment will also eliminate the problem of the Commission having to name a successor if the lessee is unable to make this important decision right away.

The third amendment in Act 272 covers the concern that if a lessee dies without designating a successor, the Department of Hawaiian Home Lands currently is required to select a successor from a multitude of relatives. This arrangement has caused problems in the family unit, and the amendment allows that the Department select either qualifying spouse or children only. If there are neither, the lease is cancelled. The onus is thus properly placed on the lessee to designate a successor.

SUMMARY

In summary, I am here today to help fulfill OHA's legislative mandate to advise on all government activities relating to Native Hawaiian programs. The Hawaiian Homes Commission Act of 1920 established an important Native Hawaiian program designed to help Native Hawaiians return to the land with their families. The amendments proposed will strengthen the program by allowing Native Hawaiian families to remain on the land which was designated for their use.

OHA, therefore, is in strong support of immediate Congressional consent to the amendments enacted by the Legislature of Hawaii to the Hawaiian Homes Commission Act. We strongly support the adoption of House Joint Resolution 17.

I thank you for this opportunity to express the views of the Office of Hawaiian Affairs, and hope that you will act favorably on House Joint Resolution 17. The amendments to the Hawaiian Homes Commission Act are needed and have already met with the approval of the people of Hawaii as represented in the State Legislature.

Senator WEICKER. Thank you very much. I have a few questions here, some to be responded to for the record, but first of all, as far as the administration is concerned, under Act 272, certain natives of one-quarter native Hawaiian ancestry become qualified as leaseholders, the majority remain unqualified. Do you believe that the unqualified natives of one-quarter ancestry could on the basis of equity assert a legal right to become leaseholders?

Ms. HOWARD. I think that such an argument would be difficult to pursue. I think the classification of Act 272 allowing for spouses and children to inherit is reasonably based, and does bear a reasonable relationship to the purpose of the Hawaiian Homes Commission Act in the interest of allowing for family continuity and stability that is so important to the continuation of this program. I believe there is a reasonable basis for the distinction.

Senator WEICKER. Do you know or do any of the members of the panel know how many natives of one-quarter native Hawaiian ancestry there are and how many would become qualified as leaseholders under Act 272? Have you got a figure?

Ms. PADEKEN. I can best respond with an 1985 survey that was sent to 7,719 applicants. The details are on Page 11 of my testimony. In that questionnaire, we were primarily interested in how many of those on the waiting list wished to be contacted for awards from the period 1984 through 1987. That was the primary purpose of the questionnaire. We also had other questions there. What we found was that of the 4,381 applicants responding out of the 7,700 questionnaires sent, 83 percent were married, and among those married approximately 33 percent were married to non-native Hawaiians, and within this group 940 were 21 percent and would have offspring that would not meet the 50 percent blood requirement, and that is only as to the waiting list. As of 1985 that would determine at least 940 applicants would have offspring that would be less than half Hawaiian, a very significant number in our opinion.

Senator WEICKER. The Committee has received testimony from currently qualified natives who are opposed to reduction of the blood quantum requirement. These persons assert that because there are 9,000 qualified natives who have not received leases, that it is inappropriate to change the law to allow non-qualified natives to receive leases. Would you care to comment on that, and also as to why there are so many qualified natives who have not received leases? Any member of the panel.

Senator FORD. You are in the middle, are you not?

Ms. PADEKEN. I think the primary issue here is whether or not there is sufficient land base, Number One, to accommodate applicants who are at least half Hawaiian. In previous testimony the Department was very confident that we do have a sufficient land base to accommodate those who are on the waiting list. We had also offered in testimony in the House that one of the primary handicaps with which the Department was faced over the years was the lack of funds to sufficiently provide for infrastructure development in order that when the applicants received these awards, that they would be able to utilize these lands immediately.

However, the Commission over the last, well, following the Federal-State Task Force recommendation, basically shifted their philosophy and their direction and what we have been doing over the

last two years is providing the land base irrespective of whether your on-site or off-site improvements are in place. To that extent we have been able to move the waiting list to accommodate at least 2,500 new applicants over the last two years.

What has happened is that while we have been moving the awards to the applicants, we have been experiencing new applicants at the rate of approximately 5,000 annually, which is all right in our opinion because we prefer to know where the native Hawaiians are and how many are interested. We continue to assert that we still have sufficient lands to meet the needs of the applicant base.

Senator WEICKER. One last question. Then I have other questions which can be responded to for the record. The dissenting views of the House attached to this legislation stated that the views of the currently qualified native Hawaiians were not adequately taken into account. So my question is, have they been formally consulted and did they have adequate opportunity to express their views?

Ms. PADEKEN. Senator, the measure seeking an amendment to the blood quantum requirement as it relates to successorship was initiated back in 1976. The bill that was initially introduced then was far different from the measure that was actually passed in 1982. I think throughout all of those years the Hawaiian community have had ample opportunities to direct their concerns to their elected leaders, and I think that their representatives at the legislature responded accordingly, and that the measure that was actually passed was very much more restricted than the initial version offered for consideration.

I do think that there has been enough coverage and opportunities provided the constituents on this matter.

Senator WEICKER. Senator Ford?

Senator FORD. Thank you, Mr. Chairman. You say that there is sufficient land, there are 200,000 acres that have been set aside. When you say there are sufficient lands to accommodate, how much land is available to an individual applicant?

Ms. PADEKEN. At this juncture, Senator, we have distributed approximately 17 percent of our land base for homestead awards.

Senator FORD. When you say homestead, is that what we would refer to as a lot?

Ms. PADEKEN. Either a residential, agricultural, or pastoral lot to a native Hawaiian.

Senator FORD. What is an agricultural lot?

Ms. PADEKEN. An agricultural lot is no more than 40 acres and no less than eight.

Senator FORD. What if I was eligible as an applicant and I apply for what you refer to as a homestead. How much land would that be?

Ms. PADEKEN. The Act is specific in terms of the acreages for the type of homesteading that you wish to engage in. If it is simply for residential purposes, then it is no more than one acre. If it is for agriculture uses, it is no more than 40 acres. If it is for pastoral, it is no more than 1,000 acres. At the time of application, the applicant will need to determine what type of homestead lease they are seeking, and this is declared to us at the time of application.

Senator FORD. Now, as I understand the Hawaiian legislature has approved all of the amendments that are being proposed here for approval by Congress.

Ms. PADEKEN. Yes, and each measure requires three readings on both houses.

Senator FORD. How many, three?

Ms. PADEKEN. Three on each side.

Senator FORD. What I am kind of concerned about is if the Hawaiian Legislature has made a decision, it is closer to the people than we are, and once they make that decision, I am not sure that we ought to object to it. So I am sympathetic with what you are trying to do here today. Does this clear up all the approvals we have to make? Or may there be some in the future?

Senator INOUYE. Yes, sir. I would like to point out, Mr. Chairman, that it was the considered judgment of the government of the State of Hawaii that these amendments before this Committee today did not violate the provision of the Statehood Act. The Statehood Act said that if amendments to the Hawaiian Homes Act are passed and such amendments would minimize or reduce the rights, privileges, and benefits, then those amendments need the consent of Congress, and it was felt by the legislature and the Governor that most of these amendments did not in any way minimize rights. For example, they included among the activities aquaculture. In 1920, there was no aquaculture, so instead of just agriculture, they added aquaculture. If anything, it would maximize or increase the benefits, but I think the task force was correct in suggesting that in order to avoid any confusion, let us throw the whole thing to Congress and have their consent. Most of the amendments are very, very technical administrative types.

Senator FORD. As I say, the Hawaiian people are represented in the Hawaiian legislature, and I am sure that they went through that on each side, and a lot of discussion and opportunity to discuss it with their local representatives, and it was just majority rule in your legislature as it relates to the Homestead Act?

Ms. PADEKEN. Yes.

Senator FORD. Fine, Mr. Chairman. I have no further questions.

Senator WEICKER. I have no further questions of any of the witnesses. As I indicated, there will be some questions for response to the record. Again, I thank all of you for making the effort to join with us this morning, and I especially thank those persons, Senator Inouye and Senator Matsunaga and Congressman Akaka, for attending, and we will be guided by your expert advise in this matter, and we might conclude it rapidly.

Senator FORD. Is there a time frame for these? Is there a time frame?

Senator INOUYE. We would like to have it passed right away, because these families that are affected have been waiting a long time, sir.

Senator WEICKER. Well, that is important. You feel that you would be ill-advised, in other words, to have another hearing in Hawaii on this subject?

Senator INOUYE. We can always arrange another hearing for another subject, sir.

Senator FORD. Mr. Chairman, let me lend my thoughts to this second hearing. January or February, we need to go to Hawaii to see how it is working. It may take several days to observe 200,000 acres.

Senator INOUYE. Yes, sir.

Senator FORD. And really there is only 34,000 of it that has been accommodated. And so I think it would be incumbent upon us to do this.

Senator INOUYE. I shall be very pleased to arrange that trip.

Senator FORD. Danny, I believe I will just take care of it myself.

Senator WEICKER. All right. Thank you all very much for your kindness and for your expert testimony, and the committee will stand adjourned.

[Whereupon, at 10:10 a.m., the committee was adjourned.]

APPENDIX

Additional Material Submitted for the Record

HOU HAWAIIANS

A TRIBAL OHANA DEDICATED TO THE SURVIVAL OF THE HAWAIIAN PEOPLE
P.O. Box 1067 Kaneohe, Hawaii 96744 Ph. (808) 538-3511

OFFICIAL COMMITTEE FILE
PLEASE RETURN

Senator James McClure, Chairman
Energy and Natural Resources Committee
360 Dirkson Building
Washington, D.C. 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
JUN 10 1986
WASHINGTON, D.C. 20510

May 30, 1986

Aloha Senator McClure,

For the record, enclosed is Chief Maui Loa's testimony on SJR17. It should be noted that when the Hawaiian Homestead and the 5F Provisions of the Statehood Admissions Act were passed, Congress retained authority over changes in Blood Quantum requirements for beneficiaries and other Amendments in order to SAFEGUARD the integrity of the Statehood Compact. For Congress to lose sight of this Trust Responsibility and change Blood Quantum plus 50 other Amendments without benefit of public hearings would make a mockery of Congress' intentions to SAFEGUARD the legislation. Copy of Documentation will be sent separately.

Mahalo Nui Loa for any consideration your committee can give to protecting the integrity of the Hawaiian Homestead and 5F Provisions of the Hawaii Admissions Act.

Kamuela Price
Hou Paralegal Service

February 12, 1986

TO: SENATE COMMITTEE - ENERGY & NATURAL RESOURCES
JAMES McCLURE, CHAIRMAN

FROM: MAUI LOA, CHIEF OF THE HOU HAWAIIANS

SUBJECT: OPPOSITION TO SJ-17

Aloha Mr. Chairman, Honorable Members of the Senate Committee & Honorable Delegation from the State of Hawaii:

My name is Maui Loa. I am Chief of the HOU, a Native Hawaiian Tribal Ohana. In 1980 the HOU filed a Complaint in the Federal Court demanding that the United States Government enforce the Hawaiian Homestead and 5(f) provisions of the Statehood Admissions Act.

In compliance with the Court's request to allow time for formulating a Hawaiian Homestead Federal and State Task Force, the HOU accepted a dismissal without prejudice. The specific purpose of the Task Force would be to make recommendations for accelerating the distribution of Hawaiian Homestead lands to the beneficiaries.

As an advisor to the HOU Elder Council, my father, Kameula Price, served on the Task Force as one of nine members, six appointed by the Governor of the State and three assigned from the Department on Interior by the President of the United States. As a direct result of the Task Force's recommendations, the Department of Hawaiian Home Lands has drawn up plans to accelerate the distribution of Hawaiian residential and farm homesteads. Ironically, we now find the State and its Congressional Delegation introducing legislation that weakens and

conceivably could even destroy, the Hawaiian Homestead Act of 1920 as amended and reaffirmed in 1959 by Congress in the Hawaii Admissions Act as a Federal mandate and condition of statehood itself. You are being asked in SJ17 without benefit of public hearings to approve the lowering of blood quantum requirements for Hawaiian Homestead awards for survivorship from 50% to one-quarter aboriginal blood. Moreover, there are 53 additional amendments tacked onto SJ17. According to testimony presented to the House Committee on Insular Affairs it was stated since over the last few years the State passed and implemented these 53 laws, why not play it safe and ask for Congressional approval.

Why not indeed. To begin with, when the 53 amendments initially were passed by the State Legislature the Native Hawaiians and the general public were assured they were only administrative procedure laws that benefited the Native Hawaiian and therefore did not require congressional consent.

Subsequently, petitioning Congressional approval of SJ17 raised grave proprietary questions. Has the State these last several years been unlawfully implementing policies calling for the prior consent of Congress or in fact is it true these 53 proposed amendments are in the best interests of Native Hawaiians and do not require Congressional approval? In any event, human decency and Congressional procedure rules should prevent a rubber stamp treatment of such far reaching and important legislation. Contrastingly everyone apparently readily understands that lowering blood quantum requirements from 50% to 25% needs

Congressional approval. Obviously, Congress realized it would not better the conditions of the Native Hawaiians to dilute their benefits to an over-expanding mixed ethnological group. While on the surface this may appear to be a rather harmless innovation, on close examination it raises a serious constitutional question.

Consider the circumstances where someone of one-quarter blood has a parent on Hawaiian Homestead land. Is is rational or constitutional to say this person has priority rights over a one-quarter blood who is not fortunate enough to have a parent with a Hawaiian Homestead award? Common sense dictates the Court would rule that it would be discriminatory and unconstitional not to extend the same entitlement rights to all those of one-quarter aboriginal blood. Just as the Hawaiian Homestead Act now reads every one of 50% aboriginal blood or more are beneficiaries regardless of whether their parents have or have not received their Hawaiian Homestead awards.

In brief, Gentlemen, by approving the concept of lowering the aboriginal blood quantum from 1/2 to 1/4, you are overloading the system and in effect contributing to breaking the back of the Hawaiian Homestead Act. The record clearly shows the State of Hawaii cannot or will not budget the necessary funds to award the eight to nine thousand people currently waiting on the list for their land. Some like my "makuahine" mother, Mama Loa, have been patiently waiting over 35 years. Under these dire circumstances, how can one expect the State to service the additional thousands upon thousands who would be claiming 1/4 blood.

Another basic defect in the proposed SJ17 successorship amendment exists in the fact it not only covers 1/4 blood quantum children of those currently with Hawaiian Homestead awards, but also allows anyone on the waiting list to assign their land to a successor of 1/4 blood quantum. Here we create a situation where those of 1/4 blood would be receiving awards while many of those native Hawaiians Congress intended as beneficiaries would continue going to their graves empty handed.

In its wisdom Congress did not allow the State without their consent to change blood quantum requirements. They realized granting the culturally uprooted Native Hawaiian of 50% or more aborginal blood their homestead award prior to expanding the eligible group would be fair, decent and equitable thing to do. Since so many have been waiting so long it is imperative that the integrity of the Hawaiian Homestead Act be preserved.

Honorable Members of this Committee, the HOU Hawaiians and their constituency, those of 50% aboriginal blood or more consider the Hawaiian Homestead and 5(f) provisions of the Statehood Admissions Act the fairest compact possible between an indigenous people and their mother country. We beseech you to contribute your support to the Hawaiian Homestead Act of 1920 as amended. Once its promises have been fulfilled to the 9,000 on the waiting list then the Native Hawaiian beneficiaries themselves could petition Congress for successorship or any other desired amendments. It would be unethical for Congress to consider such action without the endorsement of those eligible

beneficiaries currently on the waiting list.

Moreover, for the United States Congress to break the promises made in the Hawaii Admissions Act would negatively effect the good name of our nation throughout the Pacific. It should be noted the Micronesians, the Marshall Islanders and the Samoans all have similar trust relations with the United States. Naturally, they will be watching to see how we keep our word given to the native Hawaiians in the Statehood compact. Furthermore, it is a matter of great concern to all the United States Aboriginal people, American Indians, Native Alaskans and Aleuts who depend on their treaties and agreements for cultural survival.

The HOU recognize the tremendous political pressure put on Hawaii's Congressional delegation by those who in the name of Native Hawaiians would for purported past misdeeds press Uncle Sam for a billion dollars in reparations or restitution. We humbly submit, however, it is not to the United States' best interests to add fuel to the fire by altering legislation Congress unquestionably intended to be at least partial restitution to the poor, needy and culturally deprived among the Native Hawaiians.

Keep in mind in 1975 the HOU petitioned congress for recognition as Native Americans. Consequently, today all Native Hawaiians and their decedents are extended educational, health and job training benefits. However, the only specific consideration for those Native Hawaiians of 50% aboriginal blood or more

whose cultural inclinations unquestionably have been compromised by Westernization, are those contained in the Hawaiian Homestead and 5(f) provisions of the Hawaii Admissions Act. To preserve the integrity of this monumental remedial aid legislation is a trust responsibility which Congress and all American citizens can endorse with pride.

Premature legislation like that proposed in SJ17 would drown out in a Saragossa Sea of legal entanglements the few remaining Native Hawaiians. A reprehensible action tantamount to legislative genocide. Gentlemen, the HOU need your support in upholding the honor of our great nation in joining us in opposition to SJ17.

Testimony of Maui Loa,

Hereditary Chief of the Hou Hawaiians

on S.J. Res. 42,

a bill to consent to an amendment to the

Hawaiian Homes Commission Act of 1920

Senate Committee on Energy

and Natural Resources

August 13, 1986

Testimony of Maui Loa,
Hereditary Chief of the Hou Hawaiians

on S.J. Res. 42,
a bill to consent to an amendment to the
Hawaiian Homes Commission Act of 1920

Mr. Chairman and members of the Committee, my name is Maui Loa. I am Chief of the Hou, a Native Hawaiian Tribal Ohana with several hundred members.

I greatly regret that I cannot testify personally before the Committee concerning S.J.Res. 42. The Hou provide services and programs to the Native Hawaiian people -- for example, a vocational education program and paralegal services -- with very limited funds. Unlike the organizations that will send representatives to the hearing, we do not have large budgets that permit frequent travel to Washington, D.C. Nevertheless, we trust that you will give our views full consideration.

Mr. Chairman and members of the Committee, the Hou oppose S.J. Res. 42. The bill is unfair to the Native Hawaiians with a blood quantum of 50 percent or more, thousands of whom still have not received homesteads. The bill will place further stress on a state agency that cannot handle even those who are eligible for homesteads now. And, the bill will create pressure to make even more people eligible for homesteads.

Before expanding further on these points, I would like to explain the history of the Hou's involvement in these issues. In 1980 the Hou filed a complaint in Federal Court demanding that the United States government enforce the Hawaiian Homes Commission Act and the 5(f) provisions of the Hawaii Statehood Admission Act.

In compliance with the Court's request to allow time for formulating a Hawaiian Homestead Federal and State Task force, the Hou accepted a dismissal without prejudice. The specific purpose of the Task Force was to make recommendations for accelerating the distribution of Hawaiian Homestead lands to the beneficiaries.

As an advisor to the Hou Elder Council, my father, Kamuela Price, served on the Task Force as one of nine members, six appointed by the Governor of the State and three assigned from the Department of the Interior by the President of the United States. As a direct result of the Task Force's recommendations, the Department of Hawaiian Home Lands has drawn up plans to accelerate the distribution of Hawaiian residential and farm homesteads. Ironically, we now find the State and its Congressional delegation introducing legislation that weakens, and conceivably could even destroy, the Hawaiian Homes Commission Act of 1920 as amended and reaffirmed in 1959 by Congress in the Hawaii Statehood Admission Act.

The most important point is that the Native Hawaiian people do not support this bill. The Hou oppose it, as do many others. A poll on this issue was conducted by the Hawaiian Homes Commission, and its results have been used to justify the change in eligibility for homesteads. However, there was a very low response rate to the poll, and of those who responded only a few over half supported the change. This is very slender evidence on which to base such a drastic amendment to an important Act.

By lowering the blood quantum from one-half to one-quarter, the federal government would be overloading the system and breaking the back of the Hawaiian Homestead Act. The record clearly shows that the State of Hawaii cannot or will not budget the funds necessary toward homesteads for the thousands of people still on the waiting list. If the current level of effort continues, it will take 50 years to provide homesteads, including necessary water and sewer hook-ups, just to those on the waiting list now. Some of these people, like my "makuakine" mother Mama Loa, have been patiently waiting over 35 years. Under these dire circumstances, wouldn't it be appropriate for the State to step up its efforts on behalf of those currently eligible, rather than adding more beneficiaries?

4

The Department of Hawaiian Home Lands has the responsibility for Native Hawaiian homesteads. In addition to lack of funds, it has other problems, many of its own making. Its financial records are in such a shambles that until very recently they could not even be audited. The Department is still trying to reorganize its financial management in response to the audit that was finally performed. This poor management has had very real cnsequences for Native Hawaiians -- for example, during one 9-month period in 1983, the Department lost $280,000 due to uninvested cash balances.

The Department testified at the hearing on the House side that there is plenty of land available for everyone on the waiting list, implying that Congress need not worry about making more people eligible for homesteads. However, this may well not be true, and the Department has no way of knowing whether it is true. Consider the following. First, the State has no accurate inventory of Hawaiian homelands. Second, over 30,000 acres of homelands are being used by local governments and other groups for purposed not authorized by the Homes Commission Act. The State has been very slow to recover this land and seek compensation on behalf of Native Hawaiians. Furthermore, the unauthorized uses have rendered surrounding homelands unsuitable as homesteads.

Third, 80,000 acres of homelands -- over 40 percent of the available land -- are leased to private, non-Native Hawaiian interests for very modest rents. And finally, those on the waiting list are entitled to express a geographic preference for their homesteads. In some areas, there is not enough land to accommodate everyone on the waiting list.

S.J. Res. 42 would not make all Native Hawaiians with one-quarter blood eligible for homesteads. It deals only with heirs. But the Hou believe that the bill takes a big step toward that result. If the floodgates do open, and many thousands more people become eligible for homesteads, the problems just discussed will have even worse consequences for the Native Hawaiians who have been waiting so long for their homesteads.

The Hou also believe that enactment of S.J. Res. 42 would engender lawsuits that could drag on for years. Where someone of one-quarter blood has a parent on a homestead, is it rational or constitutional to say this person has priority rights over a one-quarter blood whose parent has no homestead? The courts would likely rule that it was discriminatory and unconstitutional not to extend the same rights to everyone of one-quarter blood.

Honorable members of this Committee, the Hou Hawaiians and their constituency, those of 50 percent aboriginal blood or more, consider the Hawaiian Homes Commission Act and the 5(f) provisions of the Statehood Admission Act the fairest compact possible between an indigenous people and their mother country. We beseech you to contribute your support to the Hawaiian Homestead Act of 1920 as amended. Once its promises have been fulfilled to the 9,000 on the waiting list then the Native Hawaiian beneficiaries themselves could petition Congress for successorship or any other desired amendments.

In the House of Representatives, the Interior Committee ratified 53 additional amendments that the State has made to the Hawaiian Homes Commission Act over the years. The committee simply tacked these amendments onto its bill without consideration or explanation.

We urge this Committee to consider each of these 52 amendments carefully. When the State Legislature passed the amendments, the Native Hawaiian people were assured that they were only administrative procedure laws that benefited the Native Hawaiian and did not require Congressional consent. Why, now, is the State asking for a bulk ratification of the Amendments? This matter deserves close scrutiny.

7

It is frequently stated that the Federal-State Task Force on the Hawaiian Homes Commission Act urged approval of the 53 amendments by Congress. This is not true. The Task Force -- of which my father was a member -- recommended that the United States give "conscientious and expeditious consideration" to the amendments. In the Task Force's view, this would correct the State's unlawful failure to comply with the Act's requirement of seeking Congressional consent for these amendments. The Task Force took no position on the merits of the amendments. (See Task Force Report, pages 20-23.)

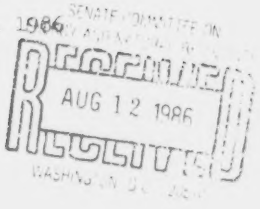
The Task Force did not advocate a hands-off, rubber-stamp approach by the United States to the Hawaiian Homes Commission Act. Instead, it recommended an increased federal role in insuring that the State of Hawaii is properly discharging its responsibilities under the Act. The Task Force recommended such steps as a federal audit of the Hawaiian Homes Commission program, designation of federal personnel to work with State personnel to improve that program, and federal lawsuits against the State for any breaches of its trust responsibility to the Native Hawaiian people. (See Task Force Report, page 20.) A Congressional rubberstamp to fifty-three unknown, unstudied amendments would hardly be in tune with the Task Force's recommendations.

In its wisdom, Congress did not allow the State to change the blood quantum requirements without federal consent. Congress realized that granting homesteads to the culturally uprooted Native Hawaiian of 50 percent or more aboriginal blood prior to expanding the eligible group would be the fair, decent and equitable thing to do. We urge Congress to preserve the integrity of the Act by requiring the State to fulfill its obligations to the intended beneficiaries.

Enactment of S.J. Res. 42 at this time would be premature, unfair, and a breach of the United States' responsibility to the Native Hawaiian people. This Committee should stop this bill now. At the least, it should hold a hearing in Hawaii so that the voice of the Native Hawaiian can be more fully heard.

Sonny A Kaniho
P.O. Box 1566
Kamueal, Hawaii 96743

August 4, 1986



The Honorable James McClure, Chairman
U.S. Senate Committee on Energy and
natural resources
361 Dirsen Senate Office Building
Washington, D.C. 20510

Re: U.S. Senate Resolution 42

Dear Senator McClure:

The attached is the Humuula Applicants testimony on U.S. Senate Resolution 42 for hearing on August 13, 1986.

Owau no me ka ha'aha'a
(I am, humbly yours)

Sonny A Kaniho

TESTIMONY
OF
THE HUMUULA APPLICANTS

BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
OH
U.S. SENATE
RESOLUTION 42
August 13, 1986

Mr Chairman and members of the Energy and Natural Resources Committee. My name is Sonny Kaniho, spoksperson for the Humuula Applicants and speaking for the group on the Senate Resolution 42.

The Humuula applicants are pastoral applicants for Humuula lands provided by the Rules and Regulation of the Department of Hawaiians Homes Lands and have been on the Humuula waiting list for 11 years .

The Humuula applicants supports the attached Aged Hawaiians testimony and the Native Hawaiian Land Trust Task Force testimony. Approve the Successorship Bill by its self with reservation. The successorship bill can ONLY be awarded when there is no applicants on the waiting list for homestead awards because Rep. Cec Heftel has stated that there are 251,000 native Hawaiians in Hawaii, the Hawaiian Homes Commission has set aside too much acreage to produce income for the Department, the Hawaiian Home Commission have too many 65 year leases leased to non native, land exchange not to be use for homestead purpose and has allowed homesteaders to lease their leases or portion for income. A Humuula applicants was arrested for trying to stop the Hawaiian Homes Commission from leasing Humuula lands to the public in 1977 when there is a waiting list like the aged Hawaiians who are on the waiting list for 25 years. And opposes the approval of the 53 amendments until the bill are made available to the beneficiaries and a hearing held in Hawaii.

Mr Chairman and distingushed members, thank you for this opportunity and thank you for your attention on this matter.

Sonny A. Kaniho

TESTIMONY
OF
THE AGED HAWAIIANS

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURSES

U.S. SENATE

AUGUST 13, 1986

Mr. Chairman and members of the Energy and Natural Resourses Committee. My name is Edward Kalama, President of "The Aged Hawaiians" organization and I am pleased to have this opportunity to testify for the Aged Hawaiians on the Senate Joint Resolution 42. (SJR 42)

The Aged Hawaiian is an organization of aged applicants on the Hawaiian Home Land (HHL) 1952 Waimea pastoral waiting list, living in Waimea on the island of Hawaii. The Aged Hawaiians have been on the waiting list for 34 years. For 30 years, the Department of Hawaiian Home Lands (DHHL), the Hawaiian Homes Commission (HHC), and the Governors of the State of Hawaii, have tried to kill the Aged applicants on the waiting list by aging them to death with policies, verbal and written, and have discriminated the Aged applicants in the HHL 1985 and 1986 acceleration program to accomodate the residential and farm lot applicants up to 1986 because pastoral lots take too much acreage.

The purpose of the U.S. Senate Joint Resolution 42 is to provide Congressional consent to amend the HHCA made by the State of Hawaii in 1982, under Act 272 "Successorship Bill"; and to approve all 53 amendments approved by the State of Hawaii since Hawaii attained Statehood, from 1959 to 1985.

The major change in the Successorship Bill is to reduce the current successorship blood requirement from 50 percent to 25 percent

for spouse or children when the homestead lessee dies. To qualify or to apply for homestead lands, the applicants must have 50 percent Hawaiian blood.

The Federal-State Task Force report on the Hawaiian Home Commission Act recommended that "As soon as possible, the State of Hawaii should seek to obtain the consent of the United States to all amendments to the Hawaiian Homes Commission Act that are required to have such consent under the Hawaii Admission Act." (9)

I am enclosing APPENDIX 8, the conclusion of the Task Force report on the amendments since statehood for the record. Exhibit A.

The Aged Hawaiians summarized the Task Force conclusion, in order to achieve the intent of the Hawaiian Homes Commission Act, the consent of the 53 amendments are required. And those requirements are to eliminate the cloudy situation, uncertainty, ambiguity and doubt.

In 1985 the House of Represetative, HJR 17, used a blanket consent to approve the Successorship Bill and all amendements to the Hawaiian Homes Commision Act since statehood. The resolution was approved on April 8, 1986. What amendments were approved, we have no knowledge of at this writing.

However, the Department of the Interior's testimony on HJR 17, Ruth Van Cleve (member to the Task Force) said HJR 17, "provides consent to only one amendment" to the HHCA. She add , "many other amendments enacted in Hawaii without congressional consent from statehood in 1959 to the present also require consent, either to become valid or remove uncertainty as to validity".

Van Cleve testified that the Department of the Interior has

concluded that "given the passage of so many years and so many amendments...it may be wisest to seek consent to all amendments" to place the HHCA on as secure a footing as possible.

In explaining the exclusion of Act 112 of 1981 (the "Buy-back Bill") Van Cleve said that the provisions contained are in "irreconcilable conflict" with later amendments to the HHCA. She added that it could be argued that the 1981 law was repealed by implication in 1982, but because "clairity of result and certainty as to consent of the HHCA" is the objective sought, the Dept. of Interior proposes to explicit exclusion of Act 112.

Relating to the Successorship Bill, Act 272, it appears the bill is a compensation bill for homesteaders only because of the loss of blood quantum while living on Hawaiian home land as a homesteader.

For the Aged applicants on the 1952 Waimea pastoral waiting list, they were purposely abused for 34 years, abused to death and the balance were discriminated in the Department of Hawaiian Home Lands 1985 and 1986 acceleration program to accommodate the residential and farm lot applicants up to 1983 because pastoral lots take too much acreage. Presently the Hawaiian Homes Commission have a plan to kill Aged applicants on the land when lands are awarded to them. That plan is Act 68 of 1985, signed by the Governor of Hawaii against the wishes of the Aged Hawaiians. Act 68 amended section 207 a. (1)(2)(3)(4). The amendments repealed the minimum acreage on farm and pastoral lots; repealed the classes of land on pastoral lots; repealed the irrigated pasture project entirely, to allow the Hawaiian Homes Commission to lease lands to native Hawaiians below

economic unit and not to provide water for irrigation pastures. Congressional consent is required because benefits are taken away.

Our Honorable Rep. Cec Heftel supported HJR 17 and testified that "of 930,271 native Hawaiian ancestry in Hawaii, only 27% have 50% or more Hawaiian blood quantum."

In 1984, because of law suit, the Hawaiian Homes Commission agree to land exchange. The Hawaiian Homes Commission gave the State of Hawaii 205,107 acres of airport lands, in return the State gave the Hawaiian Homes Commission 13,822 acres of industrial lands in Honolulu. The 13,822 acres are not to be used for homestead purpose the Commission said. The Hawaiian communities on the island of Hawaii opposed the exchange. The matter is now in the Department of the Interior.

Since 1983 the Aged Hawaiians and the Humuula applicants have continuously begged the Hawaiian Homes Commission to recall the Humuula and Piihonua lands for pastoral purpose, was always denied because the lands are income producing lands.

The Constitution of the State of Hawaii mandates the State legislature to make sufficient sums available for the development of home, agriculture, farm and ranch lots, rehabilitation project, administration account and other accounts and projects. (section 1. Article XII)

The Hawaiian Homes Commission has violated their trust duty by allowing homesteaders to sublease their lease or portion for income while the law does not allow such practice.

Mr. Chairman and members of the committee, The Aged Hawaiians agree with the Task Force Report and Ruth Van Cleve's testimony, that all amendments approved by the Governor since statehood, re-

quires Congressional consent.

The Aged Hawaiians support the "SUCCESSORSHIP BILL" by its self with reservation. That reservation is the Successorship Bill can ONLY be awarded when there is no applicants on the waiting list waiting for homestead awards because Rep. Heftel's testimony stated that there are 251,000 plus native Hawaiians in Hawaii, The Hawaiian Homes Commission has set aside too much acreage to produce income for the Department, the Hawaiian Homes Commission have too many 65 year leases leased to non-natives, land exchanged not to be used for homestead purpose and had allowed homesteaders to lease out their lease or portion for income. And opposes the approval of the 53 amendments approved by the Governors of Hawaii since statehood, until the bills are made available to beneficiaries and a hearing is held in Hawaii.

Mr. Chairman and distinguished members, The Aged Hawaiians beg you to bring the hearing of the 53 amendments to Hawaii before some of them dies on the waiting list and thank you for your attention to this matter.

could be expected to infer from the Legislature's action that U.S. consent should be obtained. In sum, the current situation is both uncertain and untidy, and it ought to be corrected.

Conclusions:

(1) The State of Hawaii should seek to obtain, as soon as reasonably possible, the consent of the United States to all amendments to the Hawaiian Homes Commission Act that are subject to such consent under the Statehood Act. Either a Member or Members of the Congress or an officer of the Executive Branch could properly be invited to initiate the consent legislation. Obtaining the consent of the United States, or seeking to obtain that consent and failing to do so, would, either way, assist in clarifying a currently cloudy situation as to what the effective provisions of the Act actually are; and by inducing better order than now prevails, litigation is likely to be avoided, and a more secure administration is likely to be achieved.

The above analysis indicates that the following sections have been amended in a manner that warrants a request for the consent of the United States: sections 207, 208, 209, 210.5, 215, and 216.

(2) Amendments to several of the sections cited in the preceding paragraph do not appear to be subject to the consent requirement, except that the pertinent State law has made them subject to a severability clause, thereby implying that the Legislature considers that the amendments may be subject to the consent requirement. To eliminate uncertainty, those sections should also be submitted for consent. (They are sections 214, 219, 219.1, 221, 222, 225, and 226.)

Henceforth, however, the severability clause should be applied with care, so as not to create doubt where none should exist.

(3) Two sections of the Act, sections 209 and 210.5, have been amended in ways that raise a question as to what their current language, including all amendments, actually is. Before the United States is asked to act upon those sections, it would be well to clarify them, so that Federal action does not simply fortify ambiguity.

(4) As a rule, if there is a genuine question as to whether an amendment requires U.S. consent or not under section 4 of the Statehood Act, it would be wise to err toward the more conservative judgment, thereby seeking consent and eliminating as much uncertainty as possible. On that basis, it would be well to request U.S. consent to the amended section 204(2).

(5) The Governor ought to designate one of his subordinates, perhaps the Director of the Department of Hawaiian Home Lands, as the officer responsible for transmitting amendments to Washington for attention. Good order requires that they be submitted reasonably soon after the Legislature has passed them and the Governor has approved them.

EXHIBIT A

MILILANI B. TRASK
1021 University Avenue
Room 2
Honolulu, Hawaii 96826

(808) 947-5088

July 16, 1986

The Honorable James McClure, Chairman
U.S. Sentat Committee on Energy and
Natural Resources
361 Dirksen Senate Office Building
Washington, D.C. 20510

Re: U.S. Senate Resolution 42

Dear Senator McClure:

I am writing in behalf of the Native Hawaiian Land Trust Task Force. The Task Force approves of the Successorship Bill. Neither the Task Force nor the Hawaiian community has been informed of nor provided with copies of the 53 amendments to the Hawaiian Homes Commission Act which have been appended to the Successorship Bill.

Please forward copies of these amendments. We request that no action be taken by the U.S. Senate on this matter until community response is received. This measure was passed by the House of Representatives in Washington before our requests for copies of the Bill were met. As of this date, we still have not received copies of these amendments.

We forward Appendix 8 of the Federal State Task Force on the Hawaiian Homes Commission Act which was prepared by Ruth VanCleve of Interior. As indicated therein, the document does not cover amendments made in 1983, 1984, 1985 or 1986, The Appendix verifys that certain amendments diminish the rights of the native beneficiaries. The Task Force feels that no amendments should be made which diminish the benefits to lessees.

As you are aware, the Federal State Task Force report documented numerous breaches of trustand violations of the Act by Federal and State agencies. There are 12,000 plus families waiting for awards. The vast bulk of trust lands are currently used by

State, Federal, County and private sector users who pay nominal or no rental. This is clearly not the time to diminish beneficiary entitlements.

Please forward copies of the amendments.

Sincerely,

William B. Trask

MBT:vt
Enclosure

STATEMENT BY WINONA E. RUBIN
ON H.J. RESOLUTION 17
to the
U. S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 13, 1986

Honorable Senator McClure, Chairman, and members of the Senate Committee on Energy and Natural Resources, aloha.

I am Winona Kealamapuana Ellis Rubin, President/Chief Executive Officer of ALU LIKE, Incorporated, a non-profit community-based statewide organization for economic and social self-sufficiency whose Hawaiian native membership number over 15,000.

This statement of the ALU LIKE board of directors is in support of House Joint Resolution 17 which proposes congressional consent for the 53 amendments of the Hawaiian Homes Commission Act, starting with Act 13 in 1959 and ending with Act 295 enacted in 1985. Although many of the amendments clearly do not require congressional consent, we understand that they are included to remove any uncertainty as to their legality. We are pleased with this consideration.

Of special significance to Hawaiians in H.J. Resolution 17 is the Hawaii state Act 272 passed in 1982 and called the "successorship bill" which ALU LIKE supports. We have followed this amendment since it was initially introduced in the Hawaii state legislature in 1976. During each successive year until 1982 there were public hearings by both houses of the state legislature and community meetings for homesteaders and eligible native Hawaiians as well as others in the Hawaii community. The final language of Act 272 is the result of several years of refinement consistent with the expressed wishes of the community. The Hawaiian community support of this measure is consistently clear.

The time lag of four years between enactment of this important legislation by the state of Hawaii and this hearing today is unfortunate, and further delay and suffering by beneficiaries should not be allowed to continue. We urge immediate passage of H.J. Resolution 17.

Mahalo (thank you) for the opportunity to present this statement.

August 12, 1986

To: Senator James A. McClure
Chairman, Energy and Natural Resources Committee
Washington, D.C. 20510-0501

From: Emmett E. Lee Loy
430 W. Kawili Street, 8-C
Hilo, Hawaii 96720

Re: Opposition of qualified native Hawaiians (not less than one-half) to attempts to lower the blood quantum requirements of the succesorship to leases under the Hawaiian Homes Commission Act (HHCA) of 1920.

Honorable Senator McClure:

I am writing to you today, to submit testimony that opposes the present attempt to lower the blood quantum requirements of beneficiaries who are to enjoy benefits under the HHCA of 1920.

Despite the effort on the part of Georgiana Padekan, Chairman of the Hawaiian Homes Commission (HHC), to ignore the protests of qualified native Hawaiians opposed to this move, I wish to sieze this opportunity in writing you to make clear the fact that native Hawaiians (not less than one-half) that continue to wait for their leases do not agree with Georgiana Padekan and her "gang" about lowering the blood quantum requirements; even if it is disguised under a "successorship" argument. I ask you for your support in this matter of great importance, for the following reasons:

1) The Department of Hawaiian Home Lands (DHHL) and the HHC (which supervises DHHLs operation) has failed to issue leases to over 12,000 qualified native Hawaiians that continue to wait for their leases.

2) Although 12,000 qualified native Hawaiians ended up being verified as qualified, an indeterminate amount of native Hawaiians were actively discouraged from applying due to misinformation and bureaucratic red-tape designed for this purpose.

3) Although 12,000 native Hawaiians qualified to be placed on a "waiting list", many more native Hawaiian children (whom are not old enough to sign up for a lease, but will be eligible at age 18) will be denied their opportunity to enjoy their benefits (that they haven't enjoyed yet).

4) There seems to exist among the proponents who wish to chisel away the unenjoyed benefits of qualified native Hawaiians, a convenient means to ignore the lease agreements under the HHCA of 1920. The terms are quite clear, the successor of the lease must be a native Hawaiian as defined in the Act (not less than one-half). For these individuals to sign a

a binding contract, fully recognizing the terms and the life of the lease, then turn around and work towards diminishing the benefits for other native Hawaiians is simply dishonest.

5) There will not be enough homestead land to go around for the next generation of qualified native Hawaiians, if this trend to chisel away the benefits from qualified native Hawaiian successors is allowed to become law. If this "gang" prevails in convincing you to pass this law that lowers the blood quantum requirements for successorship to a HHCA lease, the inevitable result would be more and more land being taken out of the communal trust lands. As more and more 25% successors occupy more leases, there is a corresponding amount of lands that is further removed from the occupancy by a qualified native Hawaiian.

6) The fact is that there are many qualified native Hawaiian parents bearing qualified native Hawaiian children. Of these, many continue to wait for their leases, still others are victims of the State of Hawaii's censorship of benefits targeted to them, and yet others having heard of the leases have been discouraged from assuming these leases.

7) If your Committee is to make the fatal mistake of passing this dispicable piece of legislation and allow these 25% (1/4th) successors to enjoy benefits under the HHCA of 1920, you will be setting the stage for 12.5% (1/8th) successors to start chiselling away at the benefits. In the face of this, you cannot stop qualified native Hawaiians from bearing qualified native Hawaiian children; the question is whom do you wish to enjoy the protection of the HHCA, the 1/8th successor, or the qualified native Hawaiian as clearly defined?

I hope that I have done my duty here in providing you the view of a native Hawaiian beneficiary of the Hawaiian Homes Commission Act of 1920, who has waited five years for his pastoral lease at Kahiki-Nui, Maui. I am oppossed to lowering the blood quantum requirement, under whatever pretext, successorship or otherwise. This is everthemore underscored when you calculate the number of qualified native Hawaiians waiting (over 12,000) by the number that is discouraged, adding that sum to the amount of future qualified native Hawaiians.

I would also like for you to express my dissatisfaction to Georgiana Padekan, Chairman of the Hawaiian Homes Commission, for traveling all the way to Washington D.C. to chisel away our benefits, when she can't even do the job she is getting paid to do; issue a pastoral lease to a native Hawaiian (which same DHHL land she authorizes issuing to Maui Factors, Inc. at Kahiki-Nui, Maui).

In closing this letter, I am thoroughly disgusted by the fact that a qualified native Hawaiian has to fight his way into the

attention of a U.S. Senator, in order to point out the effort to diminish the benefits for native Hawaiians. As a United States Senator, please be exceptionally critical of Georgiana Padekans' suggestion to lower the blood quantum requirements, and recognize that she was appointed by a non-native Hawaiian, and she does not represent the view of all native Hawaiians.

An accurate characterization of Georgiana Padekan would be that of an "Uncle Tom". Appearing to be representative of the native Hawaiians, but in fact, serving the interests of those most in a position to exploit and to continue to exploit qualified native Hawaiians. If you have the opportunity, ask her why is she in Washington D.C., when she hasn't issued Emmett Lee Loy his pastoral lease? Also ask her why she is trying to lower the blood quantum for successors, when she can't even do the job of issuing leases to qualified native Hawaiians. Finally, ask her to find another means of gainful employment away from DHHL.

I am also enclosing some copies of our local newspaper articles that describe Ms. Padekans' ignorance in some detail, and the resulting responses of native Hawaiians waiting for their leases.

I request that you hold up the passage of this bill to chisel away our benefits until "Hell freezes over".

"Ua Mau Ke Ea O Ka Aina I Na Opio"
(The Life Of The Land Is Perpetuated By It's Youth)

Your Citizen,

Emmett E. Lee Loy

cc:dhhl.fl.(1)